(2015) 03 MAD CK 0010

In the Madras High Court

Case No : C.M.A.(MD)No.107 of 2013 and M.P.(MD) No.1 of 2013

Oriental Insurance Company Limited APPELLANT

Vs

Perinbam RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Citation : (2016) 1 TNMAC 281

Hon'ble Judges : Mr. D. Hariparanthaman, J.

Bench : Single Bench

Advocate : Mr. C. Ramachandran, Advocate, for the Appellant; Mr. G. Prabhu Rajadurai, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. D. Hariparanthaman, J.—It is an unfortunate case, since a widow, father and mother of the deceased have yet to get compensation for the death of the deceased, who died in the road accident 25 years ago on 28.05.1990. It is the second round of litigation.

2. On 28.05.1990, the deceased viz., Prabhakaran rode the motor cycle that was insured with the appellant Insurance Company. The deceased was the owner of the motor cycle. He was a graduate. He travelled from Tuticorin to Sawyerpuram. There was a pillion rider and his name is also Prabhakaran. The person, who rode the two wheeler died due to the accident and the pillion rider escaped unhurt.

3. The claimants viz., father, mother and the wife of the deceased made a claim in M.C.O.P.No.100 of 1991 before the Principal District Judge, Tirunelveli. Later, on bifurcation of the District, it was transferred to the file of Subordinate Judge, Tuticorin and renumbered as M.C.O.P.No.62 of 1991. Later, it was again transferred to the file of the Principal District Judge, Tuticorin and renumbered as M.C.O.P.No.196 of 2000. The claimants claimed Rs. 15,00,000/- as compensation. On the side of the claimants, the first claimant and the pillion rider were examined as witnesses and documents Ex.P1 to P11 were marked. On

the side of the insurance company, one witness was examined and Exs.R1 to R5 were marked. The learned Principal District Judge, Tuticorin, in the judgment and decree dated 30.01.2004, awarded Rs.6,20,000/- as compensation to the claimants and directed the appellant Insurance Company to pay the same. The compensation was only based on loss of future income due to the death of the person and no other amount was awarded under other heads. The Tribunal rejected the contention of the appellant Insurance Company that the accident did not take place with the bus, which was insured with the appellant Insurance Company. The said contention is based on the FIR relating to the accident, which narrates that the accident was due to the rash and negligent riding of the person, who rode the motor cycle and hit against the electric post. The First Information was given by the pillion rider and the case is registered in crime No.149 of 1990 under Sections 279, 337 and 304-A of I.P.C by the Sawyerpuram P.S. The pillion rider disowned the narration in the FIR as his version and gave a different version before the Tribunal. The Tribunal accepted the version of the pillion rider that was given before the Court.

4. The appellant Insurance Company filed C.M.A.1272 of 2005, questioning the aforesaid judgment and decree on the ground that the Tribunal committed error in fastening the liability on the Insurance Company since the bus, which was insured with the insurance company, did not involve in the accident as per Ex.P9, First Information Report. The Insurance Company also alleged that the report of the Motor Vehicle Inspector and all the other documents relating to the First Information Report were not produced and the concerned police, who registered the FIR was not examined.

5. This Court passed an order dated 29.09.2011 in C.M.A.1272 of 2005 setting aside the award in question and remitted the matter to the file of the Motor Accidents Claim Tribunal. This Court, while remitting the matter, directed the appellant to produce the report of the Motor Vehicles Inspector and to send for all the documents relating to the case registered on the basis of Ex.P9-FIR and also directed to examine the concerned police. Thus, it ended in the second round of litigation.

6. After remand, the appellant insurance company examined the second witness and documents Exs.R6 to 9 were marked. R2 is the Special Sub Inspector of Police, Sawyerpuram Police Station. The earlier oral and documentary evidence was kept intact. The Tribunal passed the judgment and decree dated 03.01.2012, based on the earlier evidence and the additional evidence that was led by the appellant on remand and granted Rs.4,20,500/- as compensation. Now, the appellant insurance company has questioned that award again in this appeal.

7. Heard both sides.

8. The learned counsel for the appellant insurance company has vehemently contended that the Tribunal was not correct in fixing the liability on the insurance company, since the pillion rider who gave first information report has stated in

the FIR that the person, who rode the motorcycle dashed against the electric post on seeing the bus, which is insured with the appellant insurance company, coming in the opposite direction. But, he deposed contrary to the version in the FIR that the driver of the bus drove the bus in a rash and negligent manner and hit against the motorcycle. Hence, the Tribunal could not have believed the version of the pillion rider, who was examined as P.W.2, to prove the negligence on the part of the driver of the bus in causing the accident.

9. The learned counsel also placed heavy reliance on Ex.P6, final report in crime No.149 of 1990 on the file of the Sawyerpuram police station. As per Ex.P6, investigation was dropped on the ground that the person responsible for the accident was the person who rode the motorcycle, but he died in the accident. It is not known as to who had prepared the final report. The person who prepared the final report was not examined before the Tribunal.

10. On the other hand, the learned counsel for the claimants has contended that the pillion rider disowned the FIR statement and categorically deposed before the Court that he did not give any such FIR. He stated before the Court that the accident was due to dashing of the bus against the motorcycle. The said version was not successfully assailed by the appellant insurance company before the Tribunal. The Tribunal has given cogent reasons for accepting the said version of P.W.2, who was subjected to cross examination and the same cannot be interfered with by this Court, unless, any contra evidence was produced by the insurance company or the findings of the Tribunal are perverse.

11. The learned counsel has further submitted that no effort was taken to examine the person, who recorded FIR at the time of accident. R.W.2 was not the person, who recorded the FIR. The closing of the criminal case registered in Crime No.149 of 1990 could not be a sole ground to disbelieve the evidence of P.W.2 and the Tribunal cannot be faulted for accepting the evidence of P.W.2. The original statement that was given by the pillion rider to the police was not produced. Only the version, that is recorded by the police in FIR alone was produced and the same was denied by the pillion rider. His version was that he gave a different complaint to the police, but, the FIR was registered contrary to his complaint. He withstood the cross examination.

12. The learned counsel has further submitted that since the scope for remand was only to consider the liability, the Tribunal was not correct in reducing compensation from Rs.6,20,000/- to Rs. 4,20,500/-. In the judgment dated 29.09.2011 in C.M.A.No.1272 of 2005 itself, this Court has stated that with regard to liability fixed upon the second respondent, the present Civil Miscellaneous Appeal has been preferred at the instance of the second respondent as appellant.

13. I have considered the submissions made by either side.

14. In Para 13 of the award, the Tribunal considered in detail about the evidence of the pillion rider and came to the conclusion that the version as given by the

pillion rider is acceptable. The Tribunal also categorically held that the insurance company failed to discharge their burden by examining the former Sub Inspector of Police to explain the situation as to the version of the pillion rider that is made before the Court. It is better to extract the entire para 13 of the award.

"P.W.2 Tr. A.Prabhakaran, pillion rider of the deceased vehicle as well as an eye witness to the occurrence in his cross examination would state that the police has obtained his signatures only in an unwritten white paper and he had not actually given the statement contained in Ex.P9 F.I.R. Perusal of Ex.P9 would disclose that it was not the written complaint lodged by P.W.2 but the statement allegedly received from P.W.2 by the police. Therefore the evidence of P.W.2 has to be accepted. R.W.1 and 2 are not eye witnesses to the occurrence. The complaint statement was received from P.W.2 by one Tr. Pugalendhi the former Sub Inspector of Police and not by R.W.2. The respondents have not taken any steps to examine the said former Sub Inspector of police to explain the situation. Hence the evidence of P.W.2 regarding the statements in FIR could not be discarded. P.W.2 in his evidence in chief would depose as follows: "28.05.90 gfy; 1.30 kzpf;F Jhj;Jf;FoapypUe;J brgj;ijahg[uj;jpw;F nkhl;lhh; irf;fpspy; o/vz;/ 690472 w vd;w tz;oia ,we;J nghd gpughfud; Xl;odhh;/ ehd; gpd;dhy; cl;fhh;e;jpUe;njd; me;j nuhL bjd;tly; nuhL. nuhl;od; ,lJ gf;fkhf nrh;itf;fhud;klj;jpw;Fk; rpt"hdg[uj;jpw;Fk; ,ilna nkhl;lhh; irf;fpis gpughfud; bkJthfj;jhd; Xl;odhh;. vjpnu tpy;tpy; vd;fpw gazpfis Vw;wpr; bry;Yk; o/vk;/ vz;.2567 g!; mjpntfkhft[k; m$hf;fpuijahft[k; Xl;o te;J v'';fs; nkhl;lhh; irf;fps; kPJ nkhjptpl;lJ/ g!; ,oj;jjhy; ,uz;L ngUk; fPnH tpGe;J tpl;nlhk; ,e;j tpgj;J g!; Xl;Lehpd; ftdf; Fiwtpdhy;jhd; Vw;gl;lJ vd;dplk; ifbaGj;J th'';fptpl;L nghyprhh; g!; Xl;LdUf;F Mjuthf xU g[fhh; jahhpj;J tpl;lhh;fs;"

Therefore from the oral evidence of P.W.2 it is evident that the occurrence had taken place only due to the rash and negligence on the part of the 1st respondent driver."

15. In view of the aforesaid detailed discussion of the facts, I have no hesitation to come to the conclusion that the accident was due to the rash and negligent driving of the driver of the bus that was insured with the appellant insurance company and I am not inclined to interfere with the findings recorded by the Tribunal in this regard and in my considered view, there is no perversity in the findings.

16. Neither the former Sub Inspector of Police was examined nor the driver of the bus, which was said to have involved in the accident was examined by the appellant insurance company. Even after remand, no effort was made by the appellant insurance company to examine the driver of the bus and the former Sub Inspector of Police to prove their version. In such circumstances, the Tribunal has reiterated its earlier finding and held that the bus involved in the accident and caused the death of the rider of the motorcycle.

17. As rightly contended by the learned counsel for the claimants, the FIR cannot

be taken as a substantial piece of evidence and it could be used for corroboration or contradiction. At this juncture, it is useful to refer to Para 14 of the judgment of this Court in Maya Azhagar and another v. Thangiah and another, reported in 2012 ACJ 2529 as hereunder :

"14. It is also a settled principle of law that the first information report is not a substantive piece of evidence and it cannot be placed on pedestal higher than the statement on oath. The first information report could be used in criminal case for corroboration or for contradiction. It is lodged before an officer, who is in-charge of the police station to set the law in motion with regard to an incident, which takes place within his jurisdiction and nothing beyond that. This principle is laid down in Oriental Insurance Co. Ltd. v. Kamli, 2010 ACJ 1340 (MP)."

Therefore, I do not find any infirmity in the judgment of Tribunal in holding that the driver of the bus was responsible for the accident.

18. The second issue is as to whether the learned counsel for the appellant could sustain the reduced amount as awarded by the Tribunal, on remand.

19. Initially, the Tribunal granted Rs.6,20,000/- as compensation. Later, after the remand, the Tribunal granted Rs. 4,20,500/- as compensation. The learned counsel for the appellant has contended that this Court has set aside the award and remitted the matter to the Tribunal and the entire matter was at large before the Tribunal and therefore the Tribunal has right to award lesser amount.

20. On the other hand, the learned counsel for the claimants has taken me through the entire judgment of this Court dated 29.09.2011 in C.M.A.1272 of 2005 and submitted that the entire judgment is relating to the evidence of P.W.2, which is contrary to the version that was given by P.W.2 in FIR. In para 3 of the said judgment also, this Court has categorically stated that with regard to liability fixed upon the second respondent, the present Civil Miscellaneous Appeal has been preferred at the instance of the second respondent as appellant. In these circumstances, this Court remitted the matter permitting the appellant to call for the records to prove their version. There was no whisper about the quantum in the order. The earlier oral and documentary evidence let in by both the sides are kept intact. The appellant insurance company only examined the 2nd witness as additional evidence and marked the documents Ex.R6 to R9. Hence, there is no reason to reduce the compensation.

21. Secondly, it is submitted by the learned counsel for the claimants that though the earnings of the deceased was not established before the Tribunal, it could be taken as Rs.3,000/-. He has also submitted that the deceased was a graduate and has also relied on Exs.P2 to P4, which are the deeds of partnership entered into between the partners and the deceased, wherein the deceased is shown as one among the partners in a business.

22. At the time of death, the claimant was aged 30 years and hence, the proper multiplier is 17 according to the learned counsel. Since the deceased is a

graduate and was also involved in the business, 50% of the amount which he earned at the time of death could be taken towards future prospects.

23. According to the learned counsel, the monthly income would be fixed at Rs.4,500/- including the future prospects and after providing ?rd amount towards personal expenses, loss of dependency could be arrived at Rs.3,000/- per month. According to him, if 17 is taken as multiplier, the amount would come to Rs. 6,12,000/- (3000 x 12 x 17). By granting some amount towards consortium to the widow and some reasonable amount towards love and affection to the parents, the claimants are in fact entitled to more compensation than the one was fixed by the Tribunal at the earlier instance at Rs.6,20,000/-. The learned counsel for the claimants has submitted that at least, the same amount of Rs. 6,20,000/- as awarded by the Tribunal in the first instance in the said circumstances may be granted now.

24. I have perused the earlier order dated 29.09.2011 made in CMA No.1272 of 2005. This Court did not find any infirmity in the amount of compensation. The issue was only to give an opportunity to the insurance company to prove their version about their liability. At this juncture, it useful extract the following passage in Para 3 of the judgment dated 29.09.2011 in C.M.A.No.1272 of 2005.

"3. The Motor Accidents Claims Tribunal after considering the available evidence on record has awarded a sum of Rs.6,20,000/- by way of compensation and the same should be paid either jointly or severally by the respondents 1 and 2. With regard to liability fixed upon the second respondent, the present Civil Miscellaneous Appeal has been preferred at the instance of the second respondent as appellant."

Since the earlier award was set aside, the Tribunal derives jurisdiction to fix the fair compensation. But, in my considered view, the reduced amount fixed by the Tribunal is not a fair one. In fact, the submission of the learned counsel for the claimants that the fair and just compensation could be Rs.6,20,000/- cannot be brushed aside.

25. The earlier compensation that was fixed by the Tribunal is Rs.6,20,000/- (Rs.3000 x 12 x 18 = Rs.6,48,000 however fixed at Rs. 6,20,000/-). This time, the Tribunal has awarded Rs.4,20,500/- the compensation under various heads are as follows:

Loss of dependency

(Rs.2,000 x 12 x 17)

Rs.4,08,000/-

Funeral expenses

Rs. 5,000/-

Loss of consortium (wife)

Rs. 5,000/-

Loss of estate

Rs. 2,500/-

Rs.4,20,500/-

26. The Tribunal took Rs.3,000/- as the earnings of the deceased and no future prospects was taken into account. The Tribunal deducted ?rd amount towards personal expenses and arrived at Rs.2,000/- as monthly loss of dependency. Thus, using multiplier as 17, the Tribunal arrived at Rs.4,08,000/- as loss of dependency. The Tribunal awarded Rs.5,000/- towards funeral expenses and Rs.5,000/- toward consortium to the widow of the deceased and Rs.2,500/- towards loss of estate. But, the Tribunal has not chosen to award any amount to the parents, who lost their son at the age of 30 years, towards love and affection.

27. In my view, the amount awarded by the Tribunal towards consortium to the widow is too a meagre sum. The Tribunal committed error in not awarding any amount towards love and affection to the parents. Furthermore, the Tribunal ought to have taken into account the future prospects, particularly, since the deceased was a graduate and he involved in business and did not keep idle. Hence, I am of the view that the earlier amount as awarded by the Tribunal dated 30.01.2004 in M.C.O.P.No.196 of 2000 is reasonable compensation and the claimants are entitled to Rs.6,20,000/- as compensation. The appellant is directed to pay the said amount with interest at 9% per annum from the date of filing the petition in M.C.O.P.No.100 of 1991, within a period of six weeks from the date of receipt of a copy of this order. The claimants are also permitted to withdraw the entire amount.

28. The Civil Miscellaneous Appeal is disposed of with the above terms. No costs. Consequently, connected M.P.(MD) No.1 of 2013 is closed.

