(2013) 11 MAD CK 0055

In the Madras High Court

Case No : C.M.A. No. 3219 of 2003

The Branch Manager, National Insurance Co. Ltd. — APPELLANT

Vs

Lakshmi and Others — RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0055

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Advocate : N.B. Surekha, for the Appellant; V. Ragavachari for R-1 to R-4, NDW for R-5 and R-6 and Mr. V. Ramakrishnan for R-7, for the Respondent

Final Decision : Dismissed

Judgement

S. Vimala, J.—This Appeal is filed by the Insurance Company, challenging the finding on negligence as well as quantum of compensation.

The parents and unmarried sisters of the deceased filed the claim petition, claiming a sum of Rs. 10,00,000/-, as compensation.

2. The deceased, Subramani, aged 25 years, a driver by Profession, earning a sum of Rs. 4,000/- per month, died in an accident that took place

on 08.10.2000. At the time of accident, the deceased was driving Eicher Mini Lorry, bearing registration No. KA07-1508, (belonging to one

Abdul Sajeed), which was insured with the New India Assurance Company Limited. He was proceeding from Dharmapuri to Kariamangalam, i.e.,

from South to North. It is alleged that, at the same time, the lorry bearing Registration No. AP13-U-1009, belonging to M. Palanisamy, which was

insured with the National Insurance Company Limited/appellant, came in the opposite direction, in a rash and negligent manner, and it hit against the mini lorry, thus causing death of the deceased.

2.1. In respect of the accident, the driver of the lorry, namely, M. Palanisamy has preferred a complaint and it has been registered in Crime No.

1287 of 2000 under Sections 279 and 304-A IPC. In the complaint, the deceased has been shown as the accused.

3. The claim was contested by the appellant/Insurance Company on the contention that it is only the deceased, who was rash and negligent in his

driving and therefore, the insured as well as the insurer of the National Insurance Company Limited is not responsible for the accident.

3.1. With this pleading, the Tribunal, after examination of witnesses, came to the conclusion that it is only the driver of the appellant, who was rash

and negligent in driving and therefore, directed the appellant to pay the compensation. This finding, on negligence, is challenged in this appeal.

4. Learned counsel for the appellant submitted that, as per the First Information Report, the entire allegation is only against the deceased and the

claimant, having filed the first information report, is bound by the allegations made in the First Information Report and the seventh respondent, i.e.,

the insurer of the mini lorry alone, should be held responsible for the accident. In support of the proposition, the decision reported in Oriental

Insurance Co. Ltd. Vs. Premlata Shukla and Others, is relied upon. In the said decision, speaking about the proof of contents of documents, it has

been held that once the document is proved, the question of reliance there upon cannot be, only in respect of part of it and the part, once having

been admitted into evidence, cannot be rejected in respect of the other part. In the very same decision, it has been pointed out that the contents of

the documents are not automatically proved only because the same is marked as an exhibit. The contents must be proved in an appropriate way,

i.e., the method known to law. Mere marking of the first information report alone will not lead to the conclusion that the contents are admitted.

5. Admittedly, the complaint was lodged to the Police towards setting the criminal law in motion. What is stated in the complaint is merely an

information/belief/perception. It has to be investigated into by the Police and it is for them to find out whether the contents stated in the First

Information Report are true or false. It is open to the Police to file the charge sheet against the accused or to refer the case as mistake of fact or mistake of law. Unless the final conclusions are arrived at, the mere allegations in the complaint cannot be stated to be a proof of document, unless

it is proved in the method/manner known to law. Neither the person who preferred the complaint was examined nor the person, who registered the

complaint. Therefore, when the document is not proved before the Court in a manner known to law, that document alone cannot be taken as a

conclusive proof to show that it was the deceased, who was negligent in driving.

6. Learned counsel for the appellant wanted to rely upon the sketch. 7.1. Probably, if it had been marked and relied upon before the Tribunal, the

Tribunal itself would have been led to a different conclusion than the one arrived at. Now, it is not open to this Court to consider the document at

all, as it is neither marked before the Tribunal nor filed before this Court with a petition under Order 41 Rule 27 CPC. Unless the other side is

given opportunity to dispute the sketch, it is not fair for this Court to rely upon that document. Therefore, the sketch could not be considered at this

stage.

7. The Tribunal has rightly commented upon the non-examination of the driver of the lorry. It is settled law that the best evidence available must

always be made available to the Court, for the purpose of appreciating the facts of the case. It is within the personal knowledge of the lorry driver

to explain, how the accident took place and in what way.

7.1. It is his contention that the mini lorry driver was responsible for the accident. When the best evidence available was not made available to the

Court, it is not open to the learned counsel for the appellant/Insurance Company to contend that it was only the deceased, who was responsible

for the accident.

For the reasons stated above, this Court holds that there is no ground for this Court to interfere with the findings of the Tribunal. In all other

respects, the findings given by the Tribunal are confirmed. The Civil Miscellaneous Appeal is dismissed. No costs.

