

(2010) 03 MAD CK 0164
In the Madras High Court
Case No : C.M.A. No. 2382 of 2005

Vasanthamma and Others

APPELLANT

Vs

The Managing Director Tamil Nadu State Transport

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163, 166(1)
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2010) 03 MAD CK 0164

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : V. Parivallal and N.S. Sivakumar, for the Appellant; A. Babu, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellants/petitioners against the Award and Decree, dated 16.02.2005, made in M.C.O.P. No. 444 of 2003, on the file of the Motor Accident Claims Tribunal, Principal District Court, Vellore, dismissing the claim petition with costs.

2. Aggrieved by the said Award and Decree, the appellants/petitioners have filed the above appeal praying to set aside the award and decree passed by the Tribunal and to allow the said petition for awarding a compensation to the claimants.

3. The short facts of the case are as follows:

On 07.04.2003, at about 08.15 p.m. at Ranipet to Sholingar main road, at Keezhvelam Village, while the deceased was proceeding as a pillion rider on the motorcycle bearing registration No. TN23 V4608 from Sholingar to Ranipet direction and at that time, the Tamil Nadu State Transport Corporation bus bearing registration No. TN23 N0669 belonging to the respondent Corporation, which was coming in the opposite direction, being driven by its driver in a rash and negligent manner at high speed and dashed against the motorcycle resulting

that he succumbed.

4. Hence, the petitioners have filed the claim petition as being the legal heirs of the deceased. The petitioner further submitted that at the time of the accident, the deceased was 52 years and was employed as Secretary in a Primary Agricultural Co-operative Bank, Sriruvallayam. He was earning a sum of Rs. 11,300/- per month. The said accident was registered by the Ranipet Police Station in Crime No. 160 of 2003 under Sections 279 and 304A of I.P.C.

5. The accident had happened due to the rash and negligent driving of the driver of the respondent's bus. As such, the respondent is liable to pay compensation, hence, the petitioners filed the claim petition for a compensation of Rs. 20,00,000/-.

6. The respondent has filed a counter statement and denied the claim of the petitioners stating that on 07.04.2003, at about 08.15 p.m. the deceased was proceeding as a pillion rider on the motorcycle bearing registration No. TN23 V4608 from Sholingar to Ranipet. At that time, the respondent's bus driver came in the opposite direction and dashed against the motorcyclist. The fact is on 07.04.2003 at 8.15 p.m. the bus bearing registration No. TN23 N0669 was driven by its driver. While so near Velam Village bus stop, the bus was stopped to alight the passengers and then started the bus. Within 10 feet there is a turning, where a two-wheeler was coming in the opposite direction in a rash and negligent manner on the wrong side and the driver of the bus after seeing the motorcycle turned the bus on the left side and stopped the bus on the mud road. But, the two wheeler rider, who came in a drunken mood and on seeing the bus applied sudden brakes and turned to his left side. Due to that the pillion rider was thrown out from the vehicle and crushed by force and fallen on the right side rear of the bus and sustained injuries. Whereas the rider of the two wheeler did not sustain any injury, which shows that the accident occurred only due to the rash and negligent driving of the two wheeler. The alleged accident is only by their own fault, for which the respondent is not liable to pay compensation. The owner and the Insurance Company of the two wheeler have to be impleaded as necessary parties but not impleaded in the petition. Hence, the claim petition has to be dismissed as non-joinder of necessary parties. The petitioners are liable to get compensation from the owner and Insurance Company alone. Further, the respondent denies the age, occupation, income and legal heirs of the deceased as alleged in the claim petition. The petitioners alleged that the deceased's salary was Rs. 11,300/- per monthly hence the petitioner ought to have produced the Income Tax payment receipt. Further, the legal heirs are receiving family pension every month. There is no merits in the claim petition, hence, the respondent prays to dismiss the claim petition with costs.

7. The Motor Accident Claims Tribunal framed three issues for the consideration namely:

(i) Who is responsible for the said accident ?

(ii) Whether the owner and Insurance Company of the motorcycle bearing registration No. TN23 V4608 are necessary parties for proper adjudication of the petition?

(iii) Whether the petitioners are entitled to compensation and if so how much amount they are entitled to?

8. On the petitioners' side four witnesses were examined as PW1 to PW4 and nine documents were marked as Exs.P1 to P9. On the respondent's side one witness was examined as RW1 and no documents were marked.

9. The certified copy of the FIR has been marked as Ex.P1. The eye witness PW2, Venkatesan lodged the complaint to the Police. He adduced evidence stating that on 07.04.2003 himself and his brother Harikrishnan were proceeding to another brother's house at Sholingar, wherefrom they started to Thiruvalem by riding on their motorcycle bearing registration No. TN23 V4608 and when the motorcycle was nearing Keezhvelam Village and proceeded a curve, when at that time the respondent bus came in the opposite direction and dashed against their motorcycle. This accident had happened at 08.15 p.m. On cross-examination, the PW2 stated that it was on head of collusion but he had not sustained any injuries. He denied the suggestion that he drove his vehicle after consuming arrack.

10. The driver of the bus was examined as RW1. The RW1 in his evidence had adduced evidence that when he was proceeding from Arcot, he took a trip at 7.30 p.m. and proceeded to Keezhvelam curve. At that time two persons came on a motorcycle in a rash and negligent manner, so he turned the bus on the left side of the mud road and hence he is not responsible for the accident and his vehicle is not connected with the said accident. On the cross-examination he fairly conceded that he has not given any complaint, he also fairly conceded that after the accident his Department Traffic Inspector inspected the place and charge sheet has been filed against him. Criminal case is pending against him. He has stated that in the opposite direction except this vehicle no vehicle has been proceeding. Motor Vehicle Inspector's Report has been marked as Ex.P3. In that TVS50 vehicle left front side foot rest has been bented but the bus has not sustained any damages.

11. At this juncture the Tribunal has to scrutiny the evidence of the PW3, while perusing the PW3's evidence, he is not considered trustworthy because after the case was reopened he was examined. At that time, he had stated that the bus overtook one bullock cart and went on the wrong side and dashed against the TVS50. The PW2, who drove the TVS50 at the time of accident is a competent to speak about whether there is any other vehicle coming. But, he has not deposed that in the opposite direction the bus had overtaken the bullock cart and went on the wrong side and dashed against the TVS50. The FIR is also silent about the bullock cart. In these circumstances, the evidence of PW3 is not trustworthy. Hence, it is eschewed. While considering the evidence of the PW2 he had stated

that the vehicle was in the opposite direction. Admittedly, the TVS50 vehicle had not been damaged. There is no evidence that the rider fell down and only the vehicle alone had been damaged on the left footrest.

12. At this juncture, the Tribunal has to visualise the vehicle's situation alone with the arguments advanced by the learned Counsel for the respondent, which has proved that on seeing the incoming vehicle PW2 lost his control while they were proceeding near the speed braker, the deceased fell down and sustained injuries. Hence, the left front side footrest had been bent. If really the heavy vehicle ie.the bus dashed against the two wheeler, the TVS50 would have damaged more extensively on the front side wheel, mud guard, front head light etc., and the rider also would have sustained injuries, but he has not sustained any injuries. In the circumstances the respondent's vehicle had dashed against the TVS50 vehicle. Hence, the respondent's bus driver is responsible for the said accident. On seeing the bus, they lost their control since they were under alcoholic mood fell down with the vehicle on the leftern side hence left front side foot rest has been bent. However, there is no damage on the right side of the vehicle, if any vehicle had come on the opposite direction and dashed against the vehicle, right side of the incoming vehicle alone sustained damaged. But their left front side foot rest alone was bent. In these circumstances this Court concludes that the petitioners have miserably failed to prove that the respondent's vehicle had dashed against the TVS50. The respondent's bus driver is not responsible for the accident.

13. It is pertinent to note that the respondent raised the contention that TVS50 owner and Insurance Company are necessary parties para No. 5 of the counter. But, he has not taken any steps. The petition is bad for non-joinder of necessary parties. Points No. 1 and 2 are answered accordingly. Point No. 3, in view of the answer given to Point Nos. 1 and 2 respondent's bus driver is not responsible for the accident, the petitioners are not entitled to get any compensation from the respondent and this petition is dismissed with no costs.

14. Learned Counsel appearing for the appellants argued that the said accident had happened due to the negligence of the respondent's bus driver for which the rider of the motorcycle, PW2, had adduced evidence and he was the eye witness. On the strength of the eye witness the claim petition ought to have been allowed. The learned Counsel further argued that the FIR was registered against the driver of the bus, the same was registered by the Police Officer. The Motor Vehicle Inspector's Report disclosed that there was no mechanical failure of the bus. The respondent's allegation that the rider of the motorcycle came in an inebriated condition, for which there was no evidence. The claimants are the legal heirs of the deceased. The deceased was a Government Employee and at that time his salary was Rs. 11,795/- per month. The Tribunal had not considered that the offending vehicle driver is facing criminal proceedings. In the said accident there is no complaint from the respondents' side.

15. The learned Counsel supporting his case cited a Judgment reported in Smt.

Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the relevant head notes of which are as follows:

Motor Vehicles Act, 1988, Section 163A read with Second Schedule - Structured formula - Compensation - Second Schedule contains a Table prescribing compensation to be awarded with reference to income and age of the deceased - Table does not specify quantum of compensation for annual income more than Rs. 40,000 - It is possible to calculate compensation on structured formula basis where income is more than Rs. 40,000 p.m. - 2/3rd of annual income multiplied by multiplier applicable to the age of the deceased would be the compensation - Discrepancies/errors in multiplier scale given in Second Schedule pointed out.

Motor Vehicles Act, 1988, Section 163A read with Second Schedule - Structured formula - Compensation - Anomalous position - Apex Court observed that compensation will be higher where deceased was idle and not having any income than where the deceased was honestly earning income between Rs. 3,000 and Rs. 12,000 p.m.

Motor Vehicles Act, 1988, Section 166(1)(c) - Claim application - Legal representative - Father - Deceased is unmarried and he is survived by parents and siblings - Whether mother alone to be considered as a dependant - Held: yes; father may have his own income and will not be considered as a dependant.

Quantum - Fatal accident - Principles of assessment - Income - Determination of - Income tax - Deduction of - Whether the amount of income tax is deductible while determining income of the deceased for purposes of computation of dependency - Held: yes; where the annual income of the deceased is in taxable range, the words "actual salary" should be read as "actual salary less tax".

Quantum - Fatal accident - Principles of assessment - Future prospects - Whether future increase in income of the deceased be taken into consideration while assessing dependency of the claimants - Held: yes; and whether average of actual income at the time of death and prospective income at the time of judgment in appeal can be taken into consideration even if actual figures are available - Held: no; in view of imponderables and uncertainties and to maintain uniformity, the Apex Court issued a rule of thumb.

16. Learned Counsel appearing for the respondent argued that he has not objection to award reasonable compensation, further the learned Counsel fairly admitted the accident.

17. Considering the facts and circumstances of the case, scrutiny of findings of the Tribunal, arguments advanced by the learned Counsel on either side, this Court is of the view that the Tribunal discussed about the damage of the motorcycle. Further, the learned Tribunal has pointed out that the claim case has not been established with proper evidence. But, this Court's view are as follows:

1. The FIR registered against the driver of the bus, which was registered by a competent Police Officer, this is a vital important document. If the case had not

been prima facie, the FIR would not have been registered against the driver.

2. The allegation against the rider of the motorcycle that he had consumed alcohol and had driven the vehicle on his own accord and caused the accident, this was stated by the respondent, for which there was no medical proof.

3. There was no sketch to indicate the tyre marks of the vehicle. In the absence of the sketch, claim petition cannot be rejected, but on the basis of the FIR and it was in force against the offending vehicle, which is sufficient for granting compensation.

4. There was no sufficient evidence to deny the compensation in this case.

5. Accident Report, Post-mortem report, Motor Vehicle Inspector's Report, criminal proceedings including FIR against the driver, which are sufficient to give compensation, accordingly this Court grants compensation as follows:

(i) The deceased was drawing a net salary of Rs. 6,623/- after deducting 1/4th share and adopting a multiplier of 8, this Court awards a compensation under the head of loss of income of Rs. 4,76,856/-,

(ii) For funeral expenses, this Court grants a sum of Rs. 10,000/-,

(iii) For consortium, this Court grants a sum of Rs. 10,000/- to the first claimant,

(iv) For love and affection, this Court grants a sum of Rs. 20,000/- to the fourth and fifth claimants,

In total, this Court grants a sum of Rs. 5,16,856/- as compensation to the claimants, together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, which is fair and equitable.

18. Therefore, this Court directs the respondent to deposit the said compensation amount with accrued interest as observed above, into the credit of the M.C.O.P. No. 444 of 2003, on the file of the Motor Accident Claims Tribunal, Principal District Court, Vellore, within a period of four weeks from the date of receipt of a copy of this Order. The said compensation amount is apportioned as follows:

1. The first petitioner apportioned a sum of Rs. 1,66,856/- with accrued interest thereon,

2. The second and third petitioners apportioned a sum of Rs. 75,000/- each with accrued interest of this apportioned share amount respectively,

3. The fourth petitioner apportioned a sum of Rs. 1,25,000/- with accrued interest thereon,

4. The fifth petitioner apportioned a sum of Rs. 75,000/- with accrued interest thereon,

19. After such a deposit has been made, the appellants/claimants are permitted

to withdraw their apportioned share amount with accrued interest thereon, lying in the credit of the M.C.O.P. No. 444 of 2003, on the file of the Motor Accident Claims Tribunal, Principal District Court, Vellore, after filing necessary payment out application in accordance with law.

20. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 16.02.2005, made in M.C.O.P. No. 444 of 2003, on the file of the Motor Accident Claims Tribunal, Principal District Court, Vellore, is set aside. There shall be no order as to costs.