

Anbazhagan and Others Vs. V. Shankar and Others

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Court : Chennai

Decided On : Oct-15-2012

Reported in : 2013(1)TNMAC454

Judge : The Honourable Mrs. Justice Aruna Jagadeesan

Appeal No. : CMA.Nos.4107 of 2008 & 2227 of 2009

Appellant : Anbazhagan and Others

Respondent : V. Shankar and Others

Advocate for Pet/Ap. : For the Appellants: M/s. C&K; Law Firm, Advocate. For the Respondents: V. Sounder Rajan, Advocate.

Judgement :

(Prayer:- These Civil Miscellaneous Appeals are filed against the Judgement and Decree dated 15.07.2008 made in MCOP.No.3537/2005 by the learned II Judge, Small Causes Court (MACT) Chennai.)

These Civil Miscellaneous Appeals are filed by the claimants and the Insurance Company respectively against the Judgement and Decree dated 15.07.2008 made in MCOP.No.3537/2005 by the learned II Judge, Small Causes Court (MACT) Chennai, whereby the Tribunal has awarded Rs.5,54,948/- as compensation to the appellants in CMA.No.4107/2008, who are the husband, two minor children and father of the deceased Asha, who died in the motor accident that had occurred on

2.3.2005.

2. The brief facts are that on 2.3.2005 at about 8.20 a.m. at Chinmaya Nagar, the deceased was travelling as a pillion rider in the motor cycle bearing Reg.No.10-B-6043 owned by her younger brother V.Shankar, who is the 1st Respondent in CMA.No.4107/2008 driven by her youngest brother V.Arunachalam for going to the School where she was employed as a Teacher. Due to rash and negligent riding of the rider of the motorcycle, the motorcycle slipped into an uneven rough and dipping surface on the road, as a result of which, the deceased fell down and sustained severe head injuries. She was immediately taken to the Surya Hospital, Chennai and despite intensive treatment given to her, she succumbed to the injuries on 11.3.2005 in the said hospital. The accident was intimated in writing to the Inspector of Police, Pondy Bazaar with a copy marked to the Dean of the Hospital. According to the claimants, the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle and thus, they claimed a sum of Rs.15,30,000/- as compensation.

3. The Appellant Insurance Company resisted the claim by filing a counter denying the allegations made in the claim petition, stating that the accident had occurred only due to the carelessness and negligent act of the pillion rider. It is further contended that there was no coverage in the policy for the pillion rider. The Tribunal, after analysing the evidence, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the rider of the motorcycle. The Tribunal, taking into account that Ex.R2 policy is the package policy wherein the pillion riders are covered, held that the Insurance Company is liable to pay compensation.

4. For the purpose of computing the loss of dependency, the Tribunal has taken the monthly income of the deceased at Rs.5000/- p.m. and after deducting 1/3rd towards her personal expenses, by applying the multiplier of 13, computed the total loss of dependency at Rs.5,19,948/-. To this, the Tribunal has added Rs.5000/- towards funeral expenses, Rs.10,000/- for the loss of consortium and Rs.20,000/- for the loss of love and affection and in all, the Tribunal awarded a sum of Rs.5,54,948/- as total compensation to the claimants with interest at 7.5

per cent p.a. from the date of the claim petition till the date of realization. Aggrieved against the same, both the claimants and the Insurance Company have filed these Civil Miscellaneous Appeals.

5. The 4th claimant, besides examining himself as PW.1, examined the eye witness to the occurrence as PW.2 and the Doctor, who treated the deceased, while she was admitted in the Surya Hospital, as PW.4. The Manager of Chinmaya Vidhyalaya School, where the deceased was employed as a Teacher, was examined as PW.3. On the side of the Appellant Insurance Company, the Administrative Assistant of the Insurance Company was examined as RW.1 and the private investigator of the Insurance Company was examined as RW.2.

6. PW.1, the father of the deceased, has deposed that on account of the rash and negligent driving of the rider of the motorcycle, who is none other than his youngest son, the motorcycle slipped into the uneven rough and dipping surface, as a result of which, the deceased fell down and sustained fatal injuries. He had denied the suggestion made to him by the Insurance Company that he had not seen the accident. In fact, his evidence indicated that he was living with his daughter, as he is a widower. Apart from PW.1, the neighbour of the deceased, by name, Pradeep PW.2 has also deposed regarding the manner of the accident. He has also deposed that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle, who had negligently ridden the vehicle into an uneven rough and dipping pit on the road, which caused serious injuries to the deceased, who fell down losing balance. Both the witnesses have deposed that the motorcycle was ridden rashly and negligently by its rider causing fatal injuries to the deceased.

7. There is no evidence adduced by the Insurance Company in rebuttal of the evidence of PW.1 and PW.2. The witnesses, who have been examined as RW.1 and RW.2, are not the eye witnesses. RW.2, who is the private investigator of the Insurance Company, has only stated that no First Information Report was lodged with the concerned Police Station and the hospital report also did not mention about the alleged accident. His evidence is to the effect that there was no First Information Report with regard to the accident. It is no doubt true that no complaint

was lodged in the Police Station either by the rider of the motorcycle or by the father of the deceased. PW.4's evidence indicated that the rider, who caused the accident, was his son and therefore, he was not intending to give any complaint. PW.2's evidence indicated that though he has helped the rider of the motorcycle in taking the injured to the hospital, but he did not think it fit to lodge a complaint with the concerned Police, as the family of the deceased were not keen on Prosecution of a criminal case. The fact that the deceased had met with the accident involving the offending vehicle on the date and place mentioned in the claim petition and sustained fatal injuries in the accident was substantiated by the evidence adduced by the claimants. In the counter, the involvement of the vehicle and the motorcycle being ridden by Arunachalam, the youngest brother of the deceased are not denied. It is merely stated that the accident had occurred on account of the negligence and carelessness act of the pillion rider, the deceased herein.

8. Failure to get First Information Report registered is not fatal to the claim petition. In *RP.Goutam Vs. RNM.Singh* (AIR-2008-MP-68), it has been held that registration of the offence and police investigation is not a condition precedent for awarding the claim under the Motor Vehicles Act. The court held that only because for one or other reason the police had failed to register a case, the claimant cannot be deprived of his right to get the compensation under the Motor Vehicles Act. Due to one reason or another, if the First Information Report of vehicular accident is not lodged with the police or the same was given at a later stage and police neither registered the offence nor investigated the same, it does not mean that right of the claimant to claim compensation is taken away. The claimants are entitled for compensation on proving the facts and circumstances regarding such accident and factum of fatal injuries sustained by the deceased. Therefore, First Information Report or police investigation is not always a condition precedent for awarding the claim. The claim could be awarded, if the same is proved by admissible evidence with all probabilities. The claim case or its victim could not be left in every case on the mercy of the police. The court is empowered to examine and adjudicate the case on the available evidence, even on those cases, in which the police neither registered the offence nor investigated the same. In a vehicular accident, where the victim suffered severe head injuries, it could not be expected from the eye witness, who had seen the accident, to lodge the report with the police. Especially,

when the accident has occurred on account of the negligent act of a family member, it cannot be expected from them to give a complaint to the police and initiate criminal Prosecution against the rider. All these circumstances must be considered with justice oriented approach. The Tribunal, considering the above aspects and after appreciating evidence available on record, held that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle and failure to report the accident to the concerned police and get a case registered will not affect the claim. It is needless to state that the claimants have proved the negligent act of the rider of the vehicle, on account of which the deceased sustained fatal injuries. Therefore, the finding of the Tribunal that the accident had occurred only due to the rash and negligent act of the rider of the motorcycle does not call for any interference by this court and the same is confirmed.

9. As regards the quantum of compensation, the learned counsel for the Appellants/claimants submitted that the Tribunal erred in not taking into account the salary certificate Ex.P11 and there is no reason to ignore the same in computing the loss of dependency to the claimants. He would submit that the Tribunal erroneously fixed the monthly income of the deceased at Rs.5000/- p.m., which is liable to be modified.

10. In the instant case, the employer has been examined as PW.3 and the salary certificate was marked as Ex.P11, which shows that the deceased's last drawn salary was Rs.7755/- PW.3's evidence indicated that the deceased joined the service as a Teacher in their school on 1.6.2003. PW.3 has deposed that she was in permanent service as a Tamil Teacher in their School. She was a First Class Post Graduate in MA (Tamil) and she had also passed B.Ed. and UGC-NET Examination and she was declared eligible for lectureship in Universities and Colleges. Her age is proved to be 34 years old, as her date of birth is 25.6.1969. As per the decision of the Honourable Supreme Court reported in decision of the Honourable Supreme Court in the case of 2009-ACJ-1298-SC (Sarla Verma Vs. DTC), future prospects has to be added to the actual income of the deceased.

11. The learned counsel for the Appellants/claimants relied on the decision of the Honourable Supreme Court reported in Radhika Gupta Vs. Oriental Insurance Co. Limited (2010-ACJ-758-SC) wherein the Honourable Supreme Court has awarded Rs.2 lakhs for future prospects in respect of a self employed person. Following the decisions of the Honourable Supreme Court reported in 2009-ACJ-1924 (R.K.Malik and another Vs. Kiran Pal and others) and 2009-ACJ-1298-SC (Sarla Verma Vs. DTC), 50 per cent of the actual income has to be added towards future prospects of the deceased. By adding so, the monthly contribution comes to Rs.11,632/-. After deducting 1/3rd towards her personal expenses, by applying the multiplier of 15, considering the age of the deceased, who was 34 years old at the time of the accident, the total loss of dependency is arrived at Rs.13,95,900/-. The award amounts of Rs.5000/- towards funeral expenses, Rs.10,000/- towards loss of consortium and Rs.20,000/- towards loss of love and affection awarded by the Tribunal shall stand unaltered. In all, a sum of Rs.14,30,900/- as total compensation is awarded to the claimants with interest at 7.5 per cent p.a. from the date of the claim petition till the date of realization.

12. In the result, the Civil Miscellaneous Appeal filed by the Appellant Insurance Company is dismissed and the Civil Miscellaneous Appeal filed by the claimants is allowed. The impugned award is enhanced to Rs.14,30,900/- from Rs.5,54,948/- as mentioned above. The claimants are entitled to a total compensation of Rs.14,30,900/- (Rupees fourteen lakhs thirty thousand nine hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realization. The Appellant is directed to deposit the enhanced award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. In the said sum, the claimants 1 to 4, who are the husband, two minor children and father of the deceased, are entitled to a sum of Rs.5,30,900/- Rs.4,00,000/-, Rs.400,000 and Rs.1,00,000/- respectively.

13. It is submitted by the learned counsel for the Appellants that a sum of Rs.3,00,000/- has already been withdrawn by the 1st claimant. It is also submitted by the learned counsel for the Appellants that pending the appeal, the 1st claimant, who is the husband of the deceased, died on 23.03.2011 and also filed a

memo to that effect, along with a copy of the death certificate. The 4th claimant is permitted to withdraw his respective award amount with proportionate interest. Since the 1st claimant died, the balance amount in the award amount of Rs.5,30,900/- awarded to the 1st claimant shall be equally apportioned among the minor claimants 2 and 3. The share of the minor claimants 2 and 3 as stated above shall be invested in any one of the Nationalized Banks, till they attain majority.

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