



C.M.A.No.1672 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1672 of 2019
and C.M.P.No.5027 of 2019

Senthil @ K.A.SassimahiBalan ... Appellant/Respondent-I

Vs

1.Gurusamy

2.Manju

3.Selvi

... Respondents/Claimants

4.National Insurance Co.Ltd.,

1631/1/B, Bhavani Main Road, Sakkari. ... Respondents/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the order and decreetal order in M.C.O.P.No.493 of 2003, on the file of Principal District Judge, Erode and dated 15.11.2006.

For Appellant

... Mr.V.Raghavachari, Senior Counsel
for Mrs.V.Srimathi

For Respondents

... No Appearance [R1 & R3]
... Notice not in ready [R2]
... Mrs.R.Sreevidhya [R4]



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JUDGMENT

Challenging the impugned award dated 15.11.2006 passed by the Principal District Judge, Erode in M.C.O.P.No.493 of 2003, the Appellant has filed the present appeal questioning the liability fixed by the Tribunal.

2. It is the case of the Appellant that on 19.02.2023, at about 5.45 p.m., when the deceased was travelling in the car bearing Reg.No.TN-34-A-6464 driven by the 1st Respondent, it is alleged that the car was driven in a rash and negligent manner and dashed against the tree on the side of the Road as a result of which, the deceased died on the spot. The claimants being the father and mother of the deceased, filed the claim petition claiming compensation. Pending the claim petition, the 2nd claimant namely the mother of the deceased died and claimants 3 & 4 were brought on record as legal heirs of the 2nd claimant before the Tribunal.

3. Before the Tribunal, the 1st claimant examined himself as P.W.1 and



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marked viz., Ex.A.1 to Ex.A.10. On the side of the respondents, R.W.1 to R.W.4 were examined and marked Ex.B-1 to Ex.B-7. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.1,59,000/- and fastened the liability on the Appellant/Driver of the vehicle. Aggrieved by the said award dated 05.03.2018, the Appellant has filed the present appeal.

4. Learned counsel appearing for the Appellant submitted that the vehicle was fully covered by the policy of Insurance with the 2nd respondent- Insurance Company and therefore, the 2nd Respondent was liable to pay the compensation by indemnifying the 1st Respondent/Appellant. In spite of the same, fastening the liability on the Appellant to pay the compensation awarded by the Tribunal is erroneous. It is the further submission of the learned counsel that the finding recorded by the Tribunal that the appellant was under the influence of alcohol while he was driving the vehicle on the basis of Exhibits and the oral evidence of R.W.4 without any documents being filed to show the consumption of alcohol in the blood of the 1st respondent, is highly erroneous and fastening of liability on the appellant by absolving the insurer is liable to



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be interfered with.

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5. Per contra, learned counsel appearing for the 4th respondent/insurance company submitted that R.W.4, the Doctor had spoken about the smell of alcohol in the person of the appellant. That being the case, it is the further submission of the learned counsel for the insurer that Ex.B-1, the accident Register copy which has been filed on behalf of the respondent clearly shows that when the appellant was brought in semi-conscious state after the accident, his breathe smelled of alchohol. It is the deposition of P.W.1 that certain medicines contains alchohol but there could be no smell of alchohol even if the said medicine was consumed. In such a backdrop, the Ex.B-1 shows that the 1st Respondent was had the smell of alchohol in his breathe. The consumption of alchohol cannot be on the basis of the medicines consumed, it can be only on the basis of actual consumption of alchohol and driving the vehicle under the influence of alchohol in violation of policy conditions. Therefore, the insurer is not liable to pay the compensation which has been properly appreciated by the Tribunal while rendering the said finding which warrants no interference.



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6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the Appellant as well as the fourth Respondent-Insurance Company and perused the materials available on record.

7. The factum of the accident as well as the coverage for the vehicle under the said policy is not in dispute. The compensaion awarded by the Tribunal has not been put in question. The only issue is that the appellant being the owner of the vehicle has been fastened with liability to pay the compensation while absolving the insurer to pay the compensation on account of the fact that the appellant while under the influence of alchohol had driven the vehichle and so the insurer is not liable to pay the compensation.

8. Though it is the specific case of the appellant that no specific test was done to show that there was an alchohol in the blood of the appellant which alone could be the determinative factor to hold that the appellant was under the influence of alchohol however, the said stand stands discredited by the evidence of Doctor R.W.4 who has clearly deposed that consumption of



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medicines which contains alchohol would not smell alchohol in the breathe of a person. In this regard, Ex.B-1 assumes significance. In Ex.B-1, the Accident Register Copy which was prepared at the time when the appellant was admitted in the hospital there is a clear mention that the appellant was in semi-conscious state and he was smelling the breathe of alchohol. If really the appellant had consumed alchohol and that it is only the effect of the medicines which he had taken and contains alchohol had resulted in the accident, there would not have been any smell in the breathe of the appellant. However, there is a document which not only speaks about the breathe of the appellant smelling alchohol but also the deposition of the Doctor had clearly established that there would be no smell of alchohol in the medicines consumed which contains alchohol. Therefore, defence created by the appellant with regard to the presence of alchohol in his breathe cannot be accepted. The said fact has been properly appreciated by the Tribunal which had absolved the Insurer from liability of paying the compensation due to the violation of policy conditions and directed the appellant to pay compensation and the said finding of the Tribunal cannot be found fault with and the appeal deserves to be dismissed.



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9. Accordingly, the appeal is dismissed and the impugned award dated 15.11.2006 in M.C.O.P.No.493 of 2003 stands confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous Petition stands closed.

21.11.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

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M.DHANDAPANI, J

NHS

To

- 1.The Motor Accident Claims Tribunal Cum
Principal District Judge, Erode.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.

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