

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2016

(Judgment Reserved on : 07.11.2016)

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.583 of 2011

and

M.P.No.1 of 2011

United India Insurance Company Ltd.,
No.38, Anna Salai,
Chennai - 2. ... Appellant/2nd Respondent

... Vs ...

1. Mrs. M.Kasthuri
2. M.Karthick
3. M.Santhosh
4. M.Srikanth
5. Mrs.Ambika ... Respondents/Petitioners

6. M/s. Adyar Motors Pvt. Ltd.,
Plot No.269, No.54, First Avenue,
Indira Nagar, Adyar,
Chennai - 2. ... 6th Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the award and decree dated 26.11.2009 made in M.C.O.P.No.2996 of 2005 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar
For RR-1 to 5 : Mr.T.G.Balachandran
For R-6 : Served

JUDGMENT

This civil miscellaneous appeal is directed against the award and decree dated 26.11.2009 made in M.C.O.P.No.2996 of 2005 on the file of the Motor Accidents Claims Tribunal, (II Judge, Small Causes Court), Chennai.

2. The facts of the case is that on 23.06.2005 at about 20.00 hours, the deceased Murugesan was about to complete the crossing of Dr.Deshmuk Durgabai Street from East to West at

the junction of Malligaippu Nagar, near Malar hospital and at that time, a Hero Honda bearing Registration No.TN-07-T-CA-CO-021 driven by its driver in a rash and negligent manner from South to North, hit the deceased. As a result of which, the deceased sustained multiple injuries and died.

3. The respondents 1 to 5 herein are the legal representatives of the deceased and they have filed a claim petition in M.C.O.P.No.2996 of 20005 before the learned II Judge, Small Causes Court, Chennai, claiming a sum of Rs.10,00,000/- as compensation against the appellant and sixth respondent herein. The Tribunal, after considering the evidence adduced on the side of the petitioners, awarded a sum of Rs.5,81,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit towards compensation. Aggrieved against the said award passed by the Tribunal, the present appeal is preferred by the appellant/second respondent in the M.C.O.P.No.2996 of 2005.

4. The learned counsel for the appellant/Insurance Company would mainly contend that in this case, even after the accident, the Investigating Officer has filed the investigation report and they have filed a petition in M.P.No.1 of 2011 for receiving the said investigation report of M/s.Vasu Associates and that has to be received as additional evidence to show the real fact what had happened on the particular date. It is further contended that the Tribunal is erred in relying on the interested testimony of P.W.1 to hold that the motorcycle insured under Trade Plate was responsible for the accident. Further, the Tribunal has failed to note that the sixth respondent is a dealer and there is no necessity to produce the vehicle after three days of motor vehicle inspection on a Saturday. The learned counsel for the appellant also contended that the appellant is given to understand that the motor vehicle inspection report envisages damages to the vehicle on 26.06.2005, but invoice indicates that the vehicle was sold to another dealer viz., M/s. Kandy Raja Services on 27.06.2005 in good condition and whereas the Registration Certificate pertaining to the said vehicle TN-02-V-6996 shows as sold to one Mr.Elavarasan on 08.12.2005 by the sixth respondent herein. The Tribunal, without considering the facts and circumstances of the case, awarded compensation of Rs.5,81,000/- to the claimants and directed the appellant/insurance company to pay the said compensation amount and therefore, the learned counsel prayed that the award passed by the Tribunal has to be set aside and the appeal has to be allowed and the matter may be remitted back to the Tribunal for fresh disposal by giving opportunity to both sides to adduce evidence.

5. The learned counsel appearing for the respondents 1 to 5/claimants would contend that the Tribunal, after considering the entire evidence and the facts and circumstances of the

case, awarded appropriate compensation and there is no illegality or infirmity in the award passed by the Tribunal and hence, he prayed that the award passed by the Tribunal has to be confirmed and the appeal has to be dismissed.

6. This Court has considered the submissions made by the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 5 and perused the entire records.

7. In this case, the second respondent herein viz., M.Karthick was examined as P.W.1 as eye-witness to the occurrence. P.W.1, in his sworn statement, had stated as follows:-

"கடந்த 23.06.2005 இரவு, சுமார் 08.00 மணியளவில் என்னுடைய தந்தை எஸ்.முருகேசன் தூர்காபாய் தேவமுக் சாலையை கிழக்கிலிருந்து மேற்கு நோக்கி கடந்து முடித்துக் கொண்டிருந்த போது தெற்கிலிருந்து வடக்கு நோக்கி அதிவேகமாகவ,ம் அஜாக் கிரதையாகவ,ம் வந்த உறீரோ ஹோண்டா மோட்டார் சைக்கிள் TN-07-T-CA-CO-921 (for regn.) திடீரென்று என் தந்தை முருகேசன் மீது பலமாக மோதி இடித்து தள்ளியது."

8. After the accident, the second respondent herein has lodged FIR on the next day i.e., on 24.06.2005 and the copy of the FIR was marked as Ex.P.1. In this case, on the side of the appellant/Insurance company, M.P.No.1 of 2011 was filed to receive the Investigation Report of M/s. Vasu Associates, dated 01.10.2010 along with the enclosures, copy of the RC Book and copy of the Invoice as additional documentary evidence in the appeal.

9. In the investigation report, it is stated as follows:-

"Why we say this because, the alleged vehicle involved in the accident was identified as Hero Honda with Chassis No.05EAAF 13912 and Engine No.05AAE 13686 and presented before the MV inspector on 26.06.2005 (i.e.) 3 days after the alleged accident. It is not clear as to why wait for a Saturday, which is supposed to be a holiday, while there were two working days available between the date of accident and the date of inspection. Moreover if at all the above vehicle was damaged in the said accident, the trade plate, alleged rider and the vehicle was very much available with the dealer, who is the insured, who conducts his daily work of registration with various RTOs could not produce the vehicle before the MV inspector on working days.

Moreover it could be seen that it was clearly mentioned in the MV report that the vehicle had sustained damages in the alleged accident and the same were notified in the MV report also, which was said to have been conducted on 26.06.2005 at 10.00 hours. However we now obtained a Tax Invoice dated 27.6.2005 from the insured (i.e.) Adyar Motors that the above vehicle was sold to M/s Kandy Raja Services, another dealer, indicating that the vehicle was in good condition on that date. It is not clear as to how the damaged vehicle was repaired in such a short notice as the insured could not produce any service or repair records for the repairs conducted and spares used on the above vehicle between 26.6.2005 and 27.6.2005. Hence the above clearly raises serious suspicion about the involvement of the above vehicle in the alleged accident.

We identified the purchaser of the vehicle as one Mr.Elavarasan, S/o. Govindarajan, 1283, 28th Street, I Block, Kambar Colony, Anna Nagar West, Chennai 600 040 and learnt that the above vehicle was registered on 8.12.2005 against Registration No.TN-02-V6996 with RTO, Annanagar. Mr.Elavarasan (9444053939) is an employee of BSNL and had pleaded ignorance of any information about the alleged accident and said that the dealer had cheated him by handing over used vehicle, which was involved in a fatal accident as new one and had mentioned that he is contemplating action against the manufacturer and dealer.

We obtained a copy of the RC Book, which is appended to the report. It could be seen from the above that even though the insured (i.e.) M/s.Adyar Motor P Ltd., claims that the vehicle was sold to Kandy Raja Services on 27.6.2005, 4 days after the alleged accident, it could be seen that the dealers name had been clearly mentioned in the RC book as Adyar Motors, which raises serious doubts about the document produced by the insured."

10. From the reading of the above report, it is clear that the 6th respondent herein viz., M/s.Adyar Motors Private Limited is a dealer in the motorcycle and the vehicle was insured with the Trade Plate Policy. It is admitted that the alleged vehicle involved in the accident was identified as Hero Honda with Chassis No.05EAAF 13912 and Engine No.05AAE 13686 and it was presented before the MV Inspector on 26.06.2005 (i.e.) 3 days after the alleged accident. The

Motor Vehicle Inspector conducted investigation on 26.06.2005 and subsequently, the said vehicle was sold to another dealer viz., M/s.Kandy Raja Services and thereafter, the vehicle was sold to one Mr.Elavarasan, S/o.Govindarajan and the vehicle was registered on 08.12.2005 and new RC book was issued to the said Elavarasan. Hence, on the date of accident i.e., on 23.06.2005, the vehicle was in the custody of the sixth respondent herein. It is also admitted that the vehicle was covered by the policy issued by the appellant/Insurance company. According to the evidence of P.W.1/Karthick, the vehicle was dashed due to the rash and negligent driving of the rider of the motorcycle TN-07-T-CA-CO-921 (for regn.) and accident had occurred and due to the accident, Murugesan died. Hence, it is clearly proved that due to the rash and negligent driving of the rider of the motorcycle, the accident occurred and at the time of accident, the vehicle was owned by M/s.Adyar Motors Pvt. Ltd., and the policy insured with the appellant is in existence on that date. Hence, the appellant/insurance company is liable to pay compensation to the claimants, who are the legal representatives of the deceased Murugesan.

11. In this case, it is immaterial whether the vehicle was inspected by the Motor Vehicle Inspector three days after the alleged accident. Further, the vehicle was sold to another dealer M/s. Kandy Raja Services and subsequently, on what date, the vehicle was delivered to Elavarasan and on what date, it was registered and RC book was issued. In this case, during the time of accident, the vehicle was in the custody of the sixth respondent herein and insured with the appellant/insurance company. Hence, both the appellant and the sixth respondent herein are liable to pay compensation to the claimants. Further, the investigation was not done properly and the investigation report was filed only on 01.10.2010 i.e., after the pronouncement of the judgment alone. Admittedly, the accident was occurred on 23.06.2005. In the Investigation Report, the date of appointment of investigation is not mentioned. But the investigation report was filed only on 01.10.2010 after lapse of one year after the pronouncement of the judgment by the Tribunal. The investigator investigated the offence only after more than five years from the date of accident and one year after the pronouncement of the judgment by the Tribunal. Hence, the investigation report is not a conclusive and final one. Even though the case is pending for more than four years, the investigator has not taken any steps to file a report.

12. During the course of trial, the Investigating Officer has filed his report one year after the pronouncement of the judgment and that report also was produced in the appellate stage. In view of the above facts and circumstances of the case, this Court is of the considered view that the petition in M.P.No.1 of 2011 filed for receiving the additional evidence cannot be accepted at this stage and the petition

deserves to be dismissed. Further, this Court is of the view that the appellant/insurance company is liable to pay compensation to the respondents 1 to 5/claimants.

13. The Tribunal, after considering the facts and circumstances of the case, correctly passed an order directing the appellant/insurance company to pay a sum of Rs.5,81,000/- towards compensation to the claimants. In view of this, this Court is of the considered view that there is no illegality or infirmity in the award passed by the Tribunal and this Court finds no reason to interfere with the award passed by the Tribunal which does not warrant any interference by this Court and hence, the civil miscellaneous appeal deserves to be dismissed.

14. In the result, the civil miscellaneous appeal is dismissed by confirming the award and decree dated 26.11.2009 made in M.C.O.P.No.2996 of 2005 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai. There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Jrl

To

The II Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

+1cc to M/s. S. Arunkumar, Advocate, S.R.No.73915
+1cc to Mr.T.G. Balachandran, Advocate, S.R.No.73374

PPA(CO)
Eu 14.2.17

C.M.A.No.583 of 2011