

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.02.2017
Judgment Pronounced on : 30.06.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.2283 of 2004

The New India Assurance Co.Ltd.,
9-3-143, Old Club Road,
Near Vinoda Mahal, Kammam. ... Appellant/II Respondent

Vs.

1. Kavitha
2. Minor Kala,
3. Minor Kausalya
4. Govindan
5. Minor Kannathasan
6. Pullaiah.
(2,3 and 5 minors rep.by their
guardian and mother
kavitha

...Respondents/Petitioners/
Ist Respondent

Prayer:- Civil Miscellaneous Appeal has filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 17.11.2003 made in M.A.C.T.O.P.No.442 of 2002 on the file of the Motor Accidents Claims Tribunal [Additional District Judge, Fast Track Court No.3], Vridhachalam.

For Appellant : Mr.K.Padmanabhan

For Respondents : No appearance

JUDGMENT

The second respondent/Insurance Company in M.C.O.P.No.442 of 2002 on the file of the Motor Accidents Claims Tribunal [Additional District Judge, Fast Track Court No.3], Vridhachalam has come forward with this appeal. While the facts pleaded by the parties presented a straight forward and least complicated case, the way the Tribunal has dealt with startles this Court.

2. On 03.05.2001, one Selvaraj and four others were travelling in a goods carrier carrying certain electrical posts on behalf of his employer Amarbabu and the said vehicle met with an accident. Selvaraj was working as a contractor in a Thermal

Plant. In the said accident Selvaraj and another died and two others suffered injuries. For the death of Selvaraj, his legal representatives namely his widow, three daughters and his father moved the Tribunal seeking compensation of Rs.5,50,000/-, against which the Tribunal has passed an award for Rs.4,23,000/- payable with interest at 9% per annum.

3. Before the Tribunal, the Insurance Company inter alia took a pointed defence, in that it contended that Selvaraj at the relevant time was a passenger in a goods carrier and the policy does not cover the passenger of a goods carrier. In dealing with the issue, the Tribunal, at the first instance has delivered a judgment dated 21.04.2002 under which it relied on the judgment of New India Assurance Company Limited Vs. Asha Rani [(2001) 6 SCC 724] and fastened the liability only on the first respondent/owner of the vehicle. Subsequently, the claimants had filed I.A.No.491 of 2003 for reviewing the said award passed by the Tribunal. The Insurance Company filed its counter affidavit too. Ultimately, Vide the impugned award dated 17.11.2003, the Tribunal allowed the review and made the Insurance Company jointly and severally liable along with the owner of the vehicle.

4. In this case, the claimants/respondents 1 to 5 are represented by their counsel Thiru.R.N.Kothandaraman and there was no representation on his behalf when the case was taken up for hearing.

5. The learned counsel for the appellant essentially contended that it is an admitted case of the claimant that Selvaraj, one of the victims in this accident, was working only under Amarbabu and not under the owner of the vehicle and that he was carrying the goods on behalf of Amarbabu, who, in fact had hired vehicle in question and if at all should there be a claim for compensation, the respondents should have moved against Amarbabu under Workmen's Compensation Act. Secondly and most significantly there is no policy cover for such passengers in the goods vehicle. He emphasised the fact that Selvaraj along with 4 others had travelled in the same vehicle.

6.1. Perusal of evidence, however does not indicate that the claimant was a gratuitous passenger of a goods carrier, but was accompanying goods for Amarbabu, and it is implicit in it that he was travelling as a representative of the owner of the goods.

6.2. This apart, what startles and disturbs this Court is the approach of the Tribunal in dealing with this issue. As earlier indicated it first passed an award on 21.04.2002. In that award it appeared to proceed on the footing that Selvaraj

was a gratuitous passenger in a goods carrier and applied the dictum in Asha Rani case. The factual correctness of this basic premise on which the award proceeded might be doubtful since Selvaraj was accompanying the goods of his employer Amarbabu. However, what happened thereafter is critical. Instead of preferring an appeal challenging the correctness of the award passed by the Tribunal, more particularly that portion of the award where the Tribunal had treated the victim of the accident as a gratuitous passenger the claimants had preferred a review petition in I.A.No.491 of 2003. Entertaining a petition such as this is a patent illegality since power to review an order is a statutory power, and Motor Vehicles Act does not provide for reviewing an award passed by the Tribunal. Taking an application for review of an award of MACT on to its file itself goes against the tenor of the statute. It is very unfortunate that the Tribunal has blundered itself in re-appreciating the evidence by revisiting the facts and re-wrote its award vis-a vis the liability of the appellant.

7. What is to be done from here on is significant. Admittedly the award passed by the Tribunal upon review of its earlier award is illegal. However, if it is set aside on that score, it will revive the original award which itself will be against law as it treated one who accompanied the goods in a goods carrier in par with a gratuitous passenger in it. Asha Rani dictum applies only to latter category of victims and not the former. In Godde Venkateswara Rao Vs Govt. of A.P. & Others [AIR 1966 SC 828] the Hon'ble Supreme Court has approved the course desisting from interfering with an illegal order if it has the effect of restoring another illegal order. This ratio applies squarely here.

8. To conclude this Court though finds some merit in the submissions of the appellant, yet for the reasons stated the appeal should fail. The appeal is accordingly dismissed and the award of the Tribunal is confirmed. The appellant is directed to deposit the entire award amount, less if any already deposited, within four weeks from the date of receipt of a copy of this order, and on such deposit, the claimants are entitled to withdraw it forthwith as apportioned by the Tribunal. The respondents 1 and 4/ major claimants are permitted to withdraw the award amount. As far as the minor respondents/claimants 2, 3 and 5 are concerned, their proportionate share of the award amount shall be initially deposited in any one of the Nationalised Banks under reinvestment scheme, initially for a period of three years renewable thereafter and the interest accrued on such deposit shall be withdrawn by their natural guardian, once in three months, till they attain majority. It is also made clear that the award amount shall be paid to the major claimants in the

form of a crossed Account Payee Cheque, favouring only the claimants and it should not be issued in favour of any other person/Company. In the case of minor claimants, the award amount shall be paid to them in the form of a crossed Account Payee Cheque, once they attain majority. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

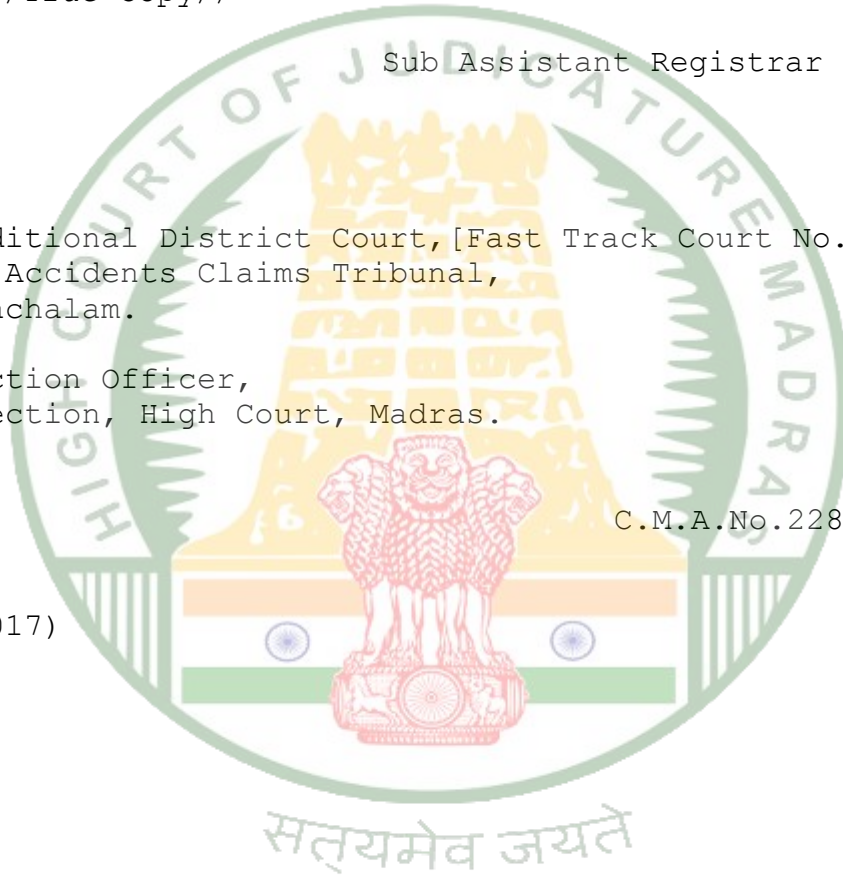
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To

1. The Additional District Court, [Fast Track Court No.3]
Motor Accidents Claims Tribunal,
Vridhachalam.
2. The Section Officer,
V.R.Section, High Court, Madras.

C.M.A.No.2283 of 2004

ak(co)
ss(21/9/2017)



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