

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:09.02.2017
CORAM
THE HONOURABLE Dr. JUSTICE S.VIMALA
C.M.A.No.665 of 2017

1. K.Sardar

2. The National Insurance
Company Limited,
Rep. by its Divisional Manager,
Office at J.N.Street,
Pondicherry. ... Appellants / Respondents

Versus

1. Rani
2. Selvam
3. Ravi (Minor) ... Respondents / Petitioners
Minor rep.by next friend
Mother Rani

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree 21.12.2000 made in M.C.O.P.No.238 of 1993 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Pondicherry.

For Appellants : Mr.K.S.Narasimhan

JUDGMENT

Contending that the claimants have not established that involvement of the lorry bearing Reg. No.PYT 1638 in the accident that happened on 14.10.1992, the insurance company, along with the owner of the vehicle have filed the present appeal.

2. The quantum of compensation awarded has not been questioned, but rather, the involvement of the lorry in the accident itself is questioned by the insurance company. It is the main grievance of the Insurance Company that the lorry was not at all involved in the accident, however, erroneously the Tribunal has given a finding that the lorry bearing Reg.No.PYT1638 was involved in the accident, without any material available on record and, therefore, the said finding given by the Tribunal is unsustainable and is liable to be interfered with. Consequently, it is contended that the insurance company is not liable to pay any compensation.

3. While it is the case of the the claimants that the accident occurred due to the rash and negligent driving of the lorry, the same is countered by the the owner and the Insurance Company disputing its involvement in the accident. A specific stand has been taken by the insurance company before the Tribunal that the alleged lorry was not plying at Pondicherry at the relevant point of time, but was being operated at Chetpet near Gingee in connection with the funeral of the mother of the owner.

4. In a nutshell, the appellants herein have taken the plea of alibi to substantiate their case that the alleged lorry was not in the vicinity on the date and time of occurrence, but was elsewhere. Therefore, it is incumbent upon the appellants to prove the plea of alibi.

5. Once a plea of alibi is taken by the appellants, then it is for them to establish the said fact. The defence of alibi is the best and worst of defence at the same time. They are the best because that if the alleged vehicle was not there at the scene when the accident happened, it could not have been involved in the accident. It is the worst because that once a plea of alibi fails, no other defence is usually open.

6. Once the appellants commit themselves to the plea of alibi, that is the only mode of their escape and if that breaks down, then no other evidence could salvage the damage that has caused to wriggle out of the said offence. In consequence, the wise person thinks carefully, before he relies on an alibi and the wisest prepare it in advance, as in a military operation, with watches synchronised and excellent reasons arranged for the supporters of his alibi being able to remember the time when he was supposed to have been with them.

7. An obligation is cast on the court to weigh in scales the evidence adduced by the claimant in proving the accident and the evidence adduced by the accused in proving its defence of alibi.

8. In the case on hand, the appellants have resorted to the plea of alibi. Therefore, to weigh the said stand, the Tribunal has evaluated the evidence putforth by the appellants. The appellants have relied on Ex.B-1 - Trip Sheet to substantiate their case that the alleged vehicle was not in the scene of occurrence at the time alleged by the claimants. However, the said evidence has been disbelieved by the Tribunal on the ground that though the appellants have filed Ex.B-1 Trip Sheet, certain crucial pages, viz., pages 12 and 13 were missing from the said document. Further, the Tribunal disbelieved the proposition putforth by the appellants that the relatives of the 1st appellant travelled in the lorry to attend the funeral of his mother, since R.W.1, the driver of the lorry, deposed that when the lorry goes beyond Pondicherry territorial limits, the seal of check post is affixed in the carbon copy of the trip sheet. However, no such seal is found in the trip sheet insofar as it related to the dates in question. Therefore, the Tribunal held that the stand taken by the appellants has not been substantiated and, therefore, disbelieved the evidence putforth by the appellants.

9. A careful perusal of the findings arrived at by the Tribunal clearly reveals that the Tribunal has weighed the evidence in its proper perspective and has arrived at a substantive finding holding that the plea of alibi taken by the appellants does not merit acceptance, as no acceptable oral or documentary evidence has been placed before it to substantiate

the same. On an overall consideration of the entire materials available on record as also the oral and documentary evidence, this Court is of the considered view that the appellants have miserably failed to substantiate the plea of alibi raised by them and, therefore, the finding of the Tribunal relating to involvement of the vehicle cannot be said to be without any basis and, accordingly it is liable to be sustained.

10. Once the plea of alibi is disbelieved, the further contention of the appellants that the compensation awarded is excessive cannot be sustained. Therefore, the said contention is liable to be rejected.

11. For the reasons aforesaid, the Civil Miscellaneous Appeal is dismissed, confirming the award 21.12.2000 passed in M.C.O.P.No.238 of 1993 by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Pondicherry.

12. The appellant/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with interest at the rate of 12% p.a. from the date of petition till the date of deposit to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimants through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ogy
To
The Motor Accident Claims Tribunal
(Principal Subordinate Judge),
Pondicherry.

GMR(CO)
sm:16.2.2018

C.M.A.No.665 of 2017