

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.675 of 2017
C.M.P.No.3800 of 2017

M/s.United India Insurance Co. Ltd.,
Mayiladuthurai,
Nagapattinam District.Appellant/ 2nd Respondent

versus

1. Delsi Umabhai
2. Jeberson (Minor)
3. Jebasindhiya (Minor)
4. Lilly Anbu
5. Jayam Devaraj
(Minors are represented by their
mother, 1st respodnent)
6. Ramchandran
7. Tamil Nadu State Transport Corporation Ltd.,
New Junction Road, Kumbakonam. ... Respondents/
Petitioner 1 to 5
and Petitioner 1 & 3

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment, dated 30.08.2013, made in M.C.O.P.No.131 of 2012, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Mayiladuthurai.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : Mr.Vijay Velliappan for R7
T.Rajkumar for R1, 4 and 5

JUDGMENT

(Judgement of this Court was made by S.MANIKUMAR, J.)

Civil Miscellaneous Appeal is directed against the order of the Motor Accident Claims Tribunal (Principal Subordinate Court), Mayiladuthurai, dated 30.08.2013, made in M.C.O.P.No.131 of 2012, by which, the Tribunal, fixing negligence on the driver

of the car, bearing Registration No.TN 01 R 9073, insured with the appellant-Insurance Company, awarded compensation of Rs.36,77,312/- with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

2. Though several grounds have been raised, Mr.N.Vijayaraghavan, learned counsel appearing for the appellant restricted his argument, only to the finding, fixing negligence on the driver of the car, bearing Registration No.TN 01 R 9073, insured with the appellant-Insurance Company. Quantum of compensation awarded by the Tribunal is also challenged.

3. Short facts leading to the appeal are as follows:

On 08.07.2011, about 3.30 P.M., when the husband of the 1st respondent, was traveling in a Ambassador Car, bearing Registration No.TN 01 R 9073, owned by the 6th respondent herein and insured with the appellant-Insurance Company, on Thanjavur-Kumbakkonam road, near Abi Abi College, Vaiyalur, driver of the said car, drove the same in a rash and negligent manner, violating traffic regulations and dashed against a bus, bearing Registration No.TN 68 N 0324, owned by the Tamil Nadu StateTransport Corporation, 7th respondent herein, coming from Thanjavur and due to the impact, he sustained grievous injuries. Despite intensive treatment in Government Hospital, Thanjavur, he succumbed to the injuries on 10.07.2011. In this regard, a case in Cr.No.444 of 2011, has been registered against the driver of the car, insured with the appellant-Insurance Company for the offences, on the file of Thanjavur Taluk Police Station. For the death of the deceased, the legal representatives claimed compensation of Rs.70,00,000/-.

4. Per contra, denying the manner of accident and negligence alleged against the driver of the car, bearing Registration No.TN 01 R 9073, insured with them, the appellant-Insurance Company has contended that the accident occurred solely due to the negligent act of the driver of the bus, owned by the 7th respondent-Transport Corporation and hence, they are not liable to pay any compensation. Without prejudice to the above, they disputed the claim made under different heads.

5. Before the Tribunal, the 7th respondent-Transport Corporation submitted that the car, involved in the accident, came in a rash and negligent manner and while negotiating a curve, instead of taking left side, came to the right side of the road and dashed against the bus and hence, contended that the accident occurred only due to the negligent act of the driver of the car, insured with the appellant-Insurance Company.

6. The 1st respondent-wife examined herself as PW.1 and PWs.2 and 3 are the eye-witness to the accident. To prove the manner of accident, on behalf of the respondents/claimants,

Ex.P1 - FIR, Ex.P2 - Post-mortem Certificate, Exs.P3 and P4 - Motor Vehicles Inspector Reports, in respect of both the vehicles, have been marked. On behalf of the appellant-Insurance Company, two witnesses have been examined and Ex.R1 - Motor Vehicles' Inspector's report has been marked.

7. On evaluation of both oral and documentary evidence, the Claims Tribunal, finding that the 6th respondent, owner of the car, bearing Registration No.TN 01 R 9073, insured with the appellant-Insurance Company, was negligent, in causing the accident, directed both the appellant-Insurance Company, insurer, to pay compensation to the victims.

8. Assailing the finding of negligence, Mr.N.Vijayaraghavan, learned counsel for the appellant-Insurance Company submitted that before the Tribunal, the driver of the car, entered appearance and rebutted the claim, on the ground that the Sketch revealed that the driver of the bus was negligent in causing the accident. He further submitted that the driver of the bus, owned by the 7th respondent-Transport Corporation also contributed to the accident and hence, the Tribunal ought to have fixed contributory negligence, on both the drivers of the bus and car respectively. It is the submission of the learned counsel that the Tribunal, while rejecting the oral testimony of the driver of the car, erred in fixing the entire negligence on him and the same requires interference.

Heard the learned counsel appearing for the parties and perused the materials available on record.

9. The 1st respondent/claimant examined herself as PW.1 and reiterated the manner of accident, stated in the claim petition. However, she has not witnessed the accident. To support the manner of accident, she has examined two witnesses, viz., Mr.Manikandan and Mr.Christopher Masilamani. To corroborate their version, she has marked the documents, viz., Ex.P1 - FIR, Ex.P2 - Post-mortem Certificate, Exs.P3 and P4 - Motor Vehicles Inspector Reports, in respect of both the vehicles. Though the driver of the Car, was examined to rebut the claim, upon perusal of the above documents and assessing the oral testimony, the Claims Tribunal found that car driver alone was negligent in causing the accident.

10. Though the learned counsel for the appellant-Insurance Company contended that the Tribunal ought to have given credence to the Sketch and consequently, to have held that the driver of the bus, owned by the 7th respondent-Transport Corporation, was also negligent in causing the accident, this Court is not inclined to accept the same for the reason that no complaint has been lodged to that effect. Further, even the sketch stated to be in support of the driver of the car, was not marked.

11. It is the well settled law that as the proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. In the absence of any rebuttal evidence, finding of the Tribunal regarding negligence cannot be termed as perverse or it is not a case of no evidence. The finding regarding negligence is confirmed.

12. There is no serious dispute over the quantum of compensation awarded by the Tribunal. In the light of our discussion, we are of the view that no valid grounds are made out to interfere with the finding. Accordingly, the award is confirmed and in the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount, if not already deposited, with proportionate accrued interest and costs less the amount already deposited to the credit of M.C.O.P.No.131 of 2012, on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Mayiladuthurai, within a period of four weeks from the date of receipt of copy of this order. On such deposit being made, the respondents/claimants, except the minors, are permitted to withdraw the same, by making necessary application before the Tribunal. Minors' share shall be deposited in any Nationalised Bank in fixed deposit, under the reinvestment scheme initially for a period of three years, proximate to the residence of the respondents/claimants. The interest accruing on the share of the minors shall be paid to the first respondent/guardian once in three months, till they attain majority. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

The Motor Accidents Claims Tribunal,
Principal Subordinate Court, Mayiladuthurai.

RJ(CO)
RS(24/03/2017)

C.M.A.No.675 of 2017