IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.12.2017
Pronounced on	18.04.2018

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1395 of 2000

1. Vellai (Died)
2. Rani ...Appellants/Petitioner
(2nd appellant- LR of the 1st appellant viz., Vellai was impleaded vide Court Order dated 11.09.2012 made in CMA.1395/2000)

Vs.

1. A.J. Guruswamy
2. National Insurance Co. Ltd., by its Branch Manager, Pudukkottai.
3. Anandan.
4. A.J. Irudhayasamy
(R-4 impleaded vide Court order dated 18.4.2018 made in CMP.No. 2100 of 2008 in CMA.No.1395/2000)

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the Motor Accident Claims Tribunal, (Sub Judge) at Thiruvallur, dated 21.4.1999 in M.C.O.P.No.122 of 1985.

For Appellant : M/s.Ramya V.Rao

For Respondents : Mrs Harini for Mr.Vijayaraghavan for R2

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the judgment and decree made in MCOP.No.122 of 1985 by the Motor Accident Claims tribunal, Thiruvallur on 21.4.1999. The claim petition arises out of a fatal accident and the claimants are the parents of the deceased person who died in the accident.

2. The brief facts of the claim petition are as follows;

(i) On 15.6.1984, at 11.30 a.m., while the petitioner's son was walking on the Ennore Road, a lorry bearing Registration No.TN-P-2464 which was driven by its driver in a rash and negligent manner, hit against the son of the claimants and caused a fatal accident, due to which, he succumbed to injuries.

(ii) The parents of the deceased, as claimants, have preferred the claim petition before the Motor Accident Claims Tribunal, (Sub Judge) at Thiruvallur claiming a sum of Rs.1,30,000/- as compensation for the death of their son. Denying the allegations in claim petition , a counter has been filed by the 2nd respondent-National Insurance Company therein, reiterating that the claimants have not filed valid insurance policy , RC and permit.

(iii) On the side of the claimants, witnesses PW1 and PW2 have been examined and on the side of the respondents, RW1 has been examined as witness and Ex.R.1-Insurance Policy was marked as document.

(iv) The tribunal, after scrutinising the counter statement filed by the respondents and also the witnesses and documentary evidence adduced on either side, has given a finding that though PW2 had deposed that he has witnessed the incident, no First Information Report has been filed by the claimants to prove the accident and no post mortem certificate has been produced by them to prove that their son had died due to fatal accident and also no death certificate has been filed to prove the death.

(v) It is also observed by the tribunal that the claim application is pending for nearly 14 years and no documentary evidence has been produced before the claimants regarding the ownership of the vehicle. Though on the side of the 2nd respondent-National Insurance Company, Ex.R1-copy of the Insurance policy was marked, wherein, the owner of the lorry was identified as one A.J.Irudayasamy, but in the claim petition, the owner of the lorry has been mentioned as one A.J.Guruswamy and one Anandan. Regarding the variance of the ownership of the lorry, no documentary evidence has been shown by the claimants before the tribunal to prove the real ownership of the vehicle involved in the accident.

(vi) Further, it was observed by the tribunal from the counter statement that the policy stands in the name of one Anandan. Considering all the above factual aspects, the tribunal rendered a finding that the claimants have not proved the accident and also the ownership of the offending vehicle and also further proceedings taken place after the occurrence of the accident, particularly in the absence of any documentary evidence regarding the death and post mortem of the deceased person and dismissed the claim petition.

3. Aggrieved against the dismissal of their claim petition, the claimants as appellants have preferred the present Civil Miscellaneous Appeal before this Court.

4. In the grounds of appeal, the appellants have stated that there is a valid insurance coverage in favour of 3rd respondent-Anandan, for which Ex.R.1- Insurance Policy was marked. The tribunal ought to have directed the claimants to implead one Irudayasamy as necessary party for proper disposal of the claim petition .

5. It is the grievance of the appellants that the tribunal ought to have directed Thiruvottiyur Police officials to produce relevant records regarding the accident. In the absence of any evidence on the side of the Insurance Company, who has failed to produce any contra evidence, the tribunal ought to have passed an award relying on the evidence produced by the appellants.

6. Heard the rival submissions of learned counsel appearing for the appellants and the learned counsel appearing for the respondents and perused the entire material documents available on record.

7. On perusal of records, it is observed that Ex.R1-Insurance Policy dated 13.6.1984 was filed before the Tribunal. On a perusal of the counter statement filed by the respondent Insurance Company, it is stated that the owner of the vehicle has not reported the accident to the company and not produced any vehicular records, viz., DL, RC and permit.

8. In the additional counter also, the 2nd respondent has averred that as per the agreement dated 5.10.1983 between the Insured and one Anandan, the 1st respondent A.J.Guruswamy is no longer the owner of the lorry bearing Registration No. TM-P-2464 and RC book is not transferred in the name of real owner who was in actual possession of the offending vehicle, as such, the 2nd respondent is not liable to answer the claim.

9. On a perusal of the averments made in the counter, it is seen that the accident is not denied by the insurance Company and objection is raised for liability only with regard to the owner ship, non production of vehicular records such as DL. RC and permit by the owner of the vehicle.

10. On hearing the arguments made by the learned counsel for the appellants and learned counsel for the respondents and also considering the fact that the claim petition itself was filed long back in the year 1985 and also the averments made by the respondent- Insurance Company, wherein, the accident is not denied and objection is raised only with regard to the ownership and non production of vehicular records of the offending vehicle, this court is inclined to award a sum of Rs.50,000/- as compensation to the appellants for loosing their son in the fatal accident.

11. It is seen that pending appeal, a memo has been filed by the learned counsel for the appellants during November 2009 stating the 1^{st} appellant viz., Vellai died on 28.08.2009 and the 2^{nd} appellant who is the wife of the 1^{st} appellant was already on record and hence no steps need to be taken for bringing the legal heirs on record in the above appeal. To that effect, the death certificate of the deceased 1^{st} appellant has also been filed. It also appears that the said memo stating that the second appellant is the sole legal heir of the deceased first appellant, who was already on record is recorded vide order of this Court dated 11.09.2012.

12. The Insurance Company is directed to deposit the compensation amount of Rs.50,000/- (Rupees fifty thousand only) awarded by this court together with interest at the rate of 7.5% per annum from the date of petition, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the second appellant viz., Rani, who is the only legal heir of the deceased first appellant is entitled to withdraw the same together with accrued interest.

13. This Civil Miscellaneous Appeal is disposed of in the above terms. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msr

To

The Motor Accidents Claims Tribunal,
Sub Judge, Thiruvallur.

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.29296
+2cc to Mr.A.N.Viswanatha Rao, Advocate Sr.28995

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ssd[co]
srg 20/08/2018