

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.NO.2457 OF 2005

The New India Assurance Co. Ltd
46, Moore Street, Madras.

... Appellant

Versus

1.Saraswathy
2.Simala
3.Manila
4.Arthi
5.Rakul Kumar
(2 to 5 are minors,
rep. by their mother and next friend
Saraswathy)

6.Lallibai
7.Govarthanlal
8.T.V.Mani
(R8 Given up)

... Respondents

Prayer :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 16.09.2003 made in M.C.O.P.No.88 of 1999 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court - IV), Poonamallee.

For Appellant : Mr.J.Chandran
For Respondents: M/s.Y.Jayanthi Bhasker
for Mr.J.Mahalingam

R1 to R7

R8 : Given up

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JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 16.09.2003 made in M.C.O.P.No.88 of 1999 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court - IV), Poonamallee.

2. The brief facts of the case are as follows :-

On 30.11.1993 at about 8.30 P.M., when the deceased was travelling in his Motor Cycle along with his friend and his daughter, near Poonamallee High Road at Velappan Chavadi, a lorry bearing Registration No.MDK 3192, driven by its driver in a dangerous manner in the same direction, dashed against the deceased on the back side of the vehicle and thus, the fatal accident occurred. The claimants have claimed a sum of Rs.10,00,000/- as compensation.

3. The appellant/Insurance Company, in the counter statement, has stated that the claim application itself is not maintainable in law and on facts and absolutely the claim petition is barred by limitation and also denied the manner of the accident stated by the claimants. It is also stated that the claim made by the claimants are excessive and the sum calculated under the various heads, by the claimants are also exorbitant.

4. The Tribunal, after analyzing the evidence and documents placed before it, has fixed the liability on the driver of the lorry, by stating that because to his rash and negligent riding only, accident occurred and observed that the Insurance Company is liable to pay the compensation. The appellant/Insurance Company, in the counter before the Tribunal, has denied the involvement of the said lorry in the accident. Aggrieved against the Judgment, the appellant/ Insurance Company has preferred this appeal.

5. In the grounds of appeal, the appellant has stated that the accident occurred only due to the rash and negligent driving of the deceased, who at the time contributed to the negligence by travelling in with three persons in his two wheeler. The further grounds raised in the appeal are that the lorry bearing Registration No.MDK 3912 was falsely implicated without any basis, when P.W.3-Om Prakash, in the FIR has not stated anything about the type of lorry involved in the accident. It is also the grievances raised by the appellant that the Motor Vehicles Inspector's report was not filed before the Tribunal and no evidence with regard to the registering of the case or filing charge sheet against any driver to determine that the said accident was due to the involvement of the alleged lorry. The Tribunal has committed error by considering the evidence of P.W.4 as eye witness, when, in the FIR, it is found that the registered number of the vehicle was seen by a person, who is one among the persons travelled in the two wheeler. Hence, the liability is very much disputed by the appellant in the appeal.

6. Heard both sides and perused the materials available on records.

7. The learned counsel for the appellant has argued that the accident occurred in the year 1993. The application was preferred only in the year 1999 and hence, the claim, is barred by limitation. On the other hand, it is argued by the respondents/ claimants that the issue was already heard on merit and the same was considered by the tribunal.

8. The other point argued by the appellant/Insurance Company is that the said lorry is not at all involved in the accident, because neither the owner nor the driver of the vehicle appeared before the Tribunal. It is also argued that, no claim has been made by the owner of the vehicle to the Insurance Company. It is also argued that when the main person, who was present at the time of the accident could not state anything about the FIR, the evidence of another person, who has been examined as eye witness and stated to have been noted registration number of the alleged lorry, cannot be relied upon. In the claim application, the alleged vehicle's registration number was not mentioned.

9. The argument advanced by the appellant is that the said vehicle is falsely implicated in the said accident after a long number of years and there is no Motor Vehicles Inspector Report has been filed and also no charge sheet was filed and none of the officials appeared before the Tribunal to prove the involvement of the said lorry as alleged by the claimants. Hence, the Tribunal's finding that the vehicle was involved in the accident and the Insurance Company is liable for the said accident, is not at all justified.

10. On a perusal of the records, it is seen that the appellant/ Insurance Company has not denied in the counter statement regarding the occurrence of the accident but the involvement of the vehicle is very much disputed by the Insurance Company. Before the Tribunal, one Haridass was examined as witness to the accident he had that on 30.11.1993 at about 8.30 P.M., while he was proceeding from Poonamallee to Numbal Village, a lorry which came in a rash and negligent manner, hit against the two wheeler, which was also proceeding in the same direction. He has also deposed that the said lorry has immediately left the place of occurrence and he only went to the place of accident and witnessed the deceased and also noted the registration number of the lorry, he did not prefer any complaint. It is also a clear evidence that the police enquired him after 20 days. Hence, in view of the evidence placed before the Tribunal that clear that the driver of the said lorry had caused the said accident due to his rash and negligent driving

and since the vehicle is insured with the appellant/Insurance Company, the Tribunal has made the owner and the Insurance Company as jointly and severally liable, for paying the compensation. With regard to the evidence of the eye witness, no contrary evidence has been placed before the Tribunal. It is seen from the records that one Murali who was examined as RW.1 has stated that the owner has not informed about the accident and no details were furnished to the appellant/Insurance Company with regard to the accident. It is also the finding of the tribunal that nothing has been elicited by the respondent by way of cross examination from the eye witness. Hence, the involvement of the vehicle was very much considered by the Tribunal.

11. Since the evidence of the eye witness is not contradicted by the appellant/Insurance Company, the Tribunal has rendered a finding regarding involvement of the vehicle and the liability on the part of the Insurance Company and therefore, the award of the Tribunal is confirmed. This Civil Miscellaneous Appeal is dismissed. No costs.

12. Accordingly, the appellant/Insurance Company is directed to deposit the entire award passed by the Tribunal, with interest and costs, after adjusting the amount, if any, already deposited, 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 respective shares of respective claimants to their bank accounts through RTGS within one week thereon.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ttr/lpp
To

1. The Motor Accident Claims Tribunal
(Additional District Judge,
Fast Track Court - IV), Poonamallee.
2. The Section Officer, V.R.Section, High Court, Madras.

+lcc to Mr.J.Mahalingam, Advocate, S.R.No.74826
+lcc to Mr.J.Mahalingam, Advocate, S.R.No.74826 (03.12.2019)

CMA.No.2457 of 2005

PM(CO)
CS/22/10/2019