

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2018

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.71 of 2005

1. Durga Bai
2. Sri Devi
3. K.Sridhar

... Appellants/Petitioners

Versus

- 1.K.Palani (Driver)
 2. B.S.Murugesan,
 3. M/s. United India Insurance Co., Ltd.,
rep. by its Divisional Manager,
Kandasamy Mudali St.,
Ranipet, Vellore District.
 4. I.Saravanan,
 5. A.Velusamy, Proprietor,
Ameer & co.,
895, Sivagami Colony,
chennai - 39.
 6. M/s. National Insurance company Ltd.,
represented by its Branch Manager,
Chennai.
- ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal file under Section 173 of Motor Vehicle Act, 1988, against the Judgement and decree dated 16th October 2002 passed in M.C.O.P. No.116 of 95 on the file of the Additional District Judge Fast Track Court No.5, Chengalpattu at Tiruvallur as the presiding officer of Motor Accident claim Tribunal.

For Appellants : Mr.V.Rajendran
Mr.S. Ramalingam for R3

For Respondents : Mr. N. Vijayaraghavan for R6

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against Judgement made in MCOP No.116 of 95 on the file of the Additional District Judge Fast Track Court No.5, Chengalpattu at Tiruvallur as the presiding officer of Motor Accident claim Tribunal..

2. The brief facts the claim application are as follows :

On 29.09.1994 while the deceased Ramesh was travelling in the van bearing Registration No.TN 23 7777 belonging to the second respondent, driven by the 1st respondent, on the Madras Bangalore High Road on official work, a lorry bearing Registration No.TNW 9028, driven by the 4th respondent in a rash and negligent hit against the van. Both the vehicles were driven without following the traffic rules, which resulted in the accident. The deceased suffered fatal injuries and succumbed to the same. Hence, the legal representatives of the deceased claimed compensation for a sum of Rs.4,00,000/- before the Court below.

3. The 3rd respondent / United Insurance Company filed a counter stating that the van bearing Registration No.TN 23 P 7777 was not driven by the 1st respondent and as per the Charge Sheet, the said van was driven by the deceased.

4. It is seen from the averments on record, that the deceased was employed in B.S.Leather, Ranipet in Vellore District. The license particulars of the deceased was also not available with the police. Further, it is the stand of the 3rd respondent in the counter that only the driver of the lorry has been charge sheeted and, therefore, the 3rd respondent, as the insurer of the vehicle is not liable to compensate the claim made by the claimants.

5. The 6th respondent / National Insurance Company, in their counter, has stated that the lorry, bearing Reg. No.TN-W-9028, is not covered under a valid insurance contract on the date of accident and, hence, the 6th respondent is not liable to compensate for the death of the deceased. The other details regarding the age, income and profession of the deceased Ramesh are also denied.

6. The Tribunal, after analysing the evidence, documents and on the basis of the evidence of PW2, RW1 and Ex.P1 a copy of First information report, held that the accident occurred due to the rash and negligent driving on the part of the driver of the lorry, bearing Registration No.TN W 9028 which belongs to the 5th respondent insured with the 6th respondent. The Tribunal

further observed that the parents of the deceased are receiving compensation from ESI Corporation for the death of deceased Ramesh and, hence, they are not entitled to claim any compensation under any other law and the claim of the petitioner is barred under Section 53 of the ESI Act. Aggrieved by the said order, the present appeal has been filed by the appellants.

7. Heard both sides and perused the documents available on record.

8. It is the contention of the respondents that as per Section 53 of the Employee's State Insurance Act 1948, the claimants are not entitled for compensation under the Motor Vehicles Act. Section 53 of the Employees' State Insurance Act is reads as follows;

53. Bar against receiving or recovery of compensation or damages under any other law:-

"An insured person or his dependants shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act or any other law for the time being in force or otherwise in respect of employment injury sustained by the insured person as an employee under this Act."

9. It is also the contention of the respondents that the deceased having suffered injuries and died in the course of his employment, having the appellants being received the compensation under Section 53 of the ESI Act, further claim of compensation under the Workmen Compensation Act is impermissible.

10. A careful perusal of the order passed by the Tribunal reveals that the parents of the deceased are receiving a sum of Rs.284/- as pension from the ESI corporation from the date of death of the deceased, i.e. 20.09.1994 which finds support from the evidence of RW2, who is the Manager of the ESI Corporation. The said pension is being paid to the parents of the deceased regularly till date.

11. Since the parents of the deceased are being received pension from the date of death of the deceased from ESI corporation, making a claim for another compensation under the Motor Vehicles Act is impermissible. The finding of the Tribunal that already the claimants are receiving compensation, thereby there comes a bar under Section 53 of ESI Act not to allow the claimants to claim compensation under the Motor Vehicles Act is quite proper and does not require any interference by this Court.

12. In view of the above reasonings, the order of the Court below is confirmed and the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

vsi2/pds

To

1. The Additional District Judge,
Fast Track Court No.V,
Chengalpattu at Tiruvallur.

2. The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr. N.Vijayaraghavan, Advocate SR.No.71519

+1cc to Mr.Srinivasa Ramalingam, Advocate SR.No.71294

C.M.A. No.71 of 2005

NMI (CO)
GMY (03/09/2019)

सत्यमेव जयते

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