

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
C.M.A.No.1544 OF 2018

New India Assurance Company Ltd.,
Chennai. Appellant/Respondent-1 II

versus

1.S.Valli @ Nagavalli
2.B.Seenu
3.Minor S.Lavanya
4.Minor S.Hariprasad
(minors rep. By 1st respondent Mother)
...Respondent 1 to 4/Petitioner

5.The Superintending Engineer,
Civil /Maintenance, NCTPS,
T.N.E.B., Chennai 102
...5th Respondent/Respondent-I

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and Decree in MCOP No.1784 of 2006 on the file of learned IV Court of Small Causes, Motor Accident Claims Tribunal, Chennai, dated 28.2.2017

For appellant : Mr.J.Chandran

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

This appeal at the instance of the New India Assurance company Ltd., challenges the liability to pay compensation on the ground that the death caused on account of electrocution involving a bus would not come under the category "accident" so as to give jurisdiction to the Motor Accident Claims Tribunal to entertain the claim petition for adjudication.

Summary of facts:-

2. The respondents 1 to 4 initiated proceedings in MCOP No.1784 of 2006 before the Motor Accident Claims Tribunal, Chennai, claiming compensation on account of the death of

Master.S.Buvanesh, who was a student of Infant Jesus Higher Secondary School, Manali. The deceased was travelling in the bus insured with the appellant. The bus was parked near the entry road of Pudu Nagar Village. The employee engaged by the Tamil Nadu Electricity Board climbed on the top of the bus and made an attempt to cut the branches of a tree. The branches of the tree appears to have fell on the 33 KV Live Electricity Wire, resulting in electrocution of Master S.Bhuvanesh, who was getting down from the bus. The postmortem report proved that the child died due to electrocution. Since it was an accident involving a Motor Vehicle, the legal representatives of the deceased boy filed a claim petition before the Motor Accident Claims Tribunal.

3. The claim was resisted by the appellant primarily on the ground that it was not a motor accident. According to the appellant, electrocution was on account of the negligent act of the employee engaged by the Tamil Nadu Electricity Board. Since it has nothing to do with the bus, the Tribunal was not competent to entertain the matter for adjudication.

4. The objection raised on the ground of maintainability was overruled by the Tribunal. The Tribunal directed the appellant being the insurer of the bus, to pay compensation to the respondents 1 to 4.

5. Though the appellant has taken up several contentions, including quantum, the challenge now is confined only to the maintainability of the claim petition before the Tribunal and the liability of the Insurance Company.

Submissions:-

6. The learned counsel for the appellant contended that the incident was a case of electrocution without the involvement of a motor vehicle. According to the learned counsel, though the boy was a passenger in a motor vehicle, there was no accident as such, giving the legal heirs a right to maintain a claim petition before the Motor Accident Claims Tribunal. No other contentions were raised before us.

Discussion:-

7. There is no dispute that the deceased boy was a passenger in a bus bearing registration no.TN 32 K 4545, owned by the Tamil Nadu Electricity Board. The vehicle was insured with the appellant. The materials available on record indicates that the bus en route, stopped near the entry road of Pudu Nagar Village. The employee of the Tamil Nadu Electricity Board by name Munusamy, with a view to remove the branches of a tree, climbed on the roof of the bus. The branches of the tree removed by the employee fell on the 33 KB live electricity wire and

resultantly, electricity passed on to the bus. The deceased while getting down from the bus, was electrocuted. The employee of the Electricity Board also sustained electric burns. The postmortem report clearly indicates the cause of death. The incident is not in dispute.

The issue:-

8. The core question is as to whether a claim petition of this nature is maintainable before the Motor Accident Claims Tribunal constituted for deciding the cases involving motor vehicles.

9. Section 165 of the Motor Vehicles Act provides for constitution of Claims Tribunal for adjudication of the claims for compensation in respect of accidents involving the death of, or bodily injury to persons arising out of the use of motor vehicles or damages to any property of a third party so arising or both. The explanation appended to Section 165 provides that the expression, "claim for compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicles, includes claims for compensation under Section 140 and Section 163-A of the Motor Vehicles Act". Sections 163-A and 163-A(1) and A(2) shows that victim or his legal representatives are entitled to claim from the owner/ Insurance Company, compensation for death or permanent disability suffered due to the accident arising out of motor vehicle.

10. The true meaning of the words, "death due to accident arising out of use of motor vehicle" was considered by the Hon'ble Supreme Court in Rita Devi and ors. vs. New India Assurance Co.Ltd. And Anr (2000 (5) SCC 113). In the said case, the vehicle was registered as a public carrier to be used for hire by passengers. The vehicle was hired by some unknown passengers. The vehicle was stolen after killing its driver. The legal representatives made a claim for compensation which was allowed by the Tribunal. The award was set aside by the High Court on the ground that it was a case of murder and not an accident.

11. The Hon'ble Supreme Court in Rita Devi, considered various provisions of the Motor Vehicles Act and Workmen's Compensation Act, 1923. The Supreme Court opined that it was a case of accidental murder involving a vehicle and as such, the legal representatives were correct in making a claim for compensation before the Tribunal.

The Supreme Court said :

10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that "murder", as it is understood, in the common parlance is a

felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

12. (a) The question as to whether the Tribunal constituted under the Motor Vehicles Act, 1988 is legally empowered to adjudicate a claim for compensation on account of injury sustained by a bystander in a blast operation carried out for digging well with the assistance of a tractor, came up for consideration before the Hon'ble Supreme Court in Kalim Khan vs. Fimindabee and others, (2018 (8) Scale 484).

(b) The Hon'ble Supreme Court, after scanning the earlier judgments on the point, observed that there should be a casual relationship existing between the violation and the accident caused in view of the expression "accident arising out of use of a motor vehicle". The Hon'ble Supreme Court finally held that while the deceased was running towards his house after purchasing certain articles from the grocery shop, he sustained serious injuries on account of a heavy stone which came flying and fell on his head, and therefore, the legal heirs were justified in initiating a claim petition before the Motor Accident Claims Tribunal as the blast operation was carried out with the help of a tractor, which was used for digging up well by keeping a blasting machine.

13. The issue raised by the appellant is therefore no more res integra in view of the judgment of the Hon'ble Supreme Court in Rita Devi and ors. vs. New India Assurance Co.Ltd. And Anr (2000 (5) SCC 113) and Kalim Khan vs. Fimindabee and others, (2018 (8) Scale 484).

14. The learned counsel for the appellant took up a further contention that since the word being "used", it should be confined to a situation only when the vehicle is mobile. The

said contention has no force in view of the fact that the word "used" has wider connotation even to cover the period when the vehicle is not moving and it is stationary. The use of vehicle would not cease on account of it having been rendered immobile on account of either mechanical defect or accident. The word "Used" should be given an extended meaning so as to include the period when the vehicle is stationary.

15. The accident in question was on account of the use of a motor vehicle. Even though the ultimate death was on account of electrocution, the fact remains that the bus insured with the appellant was used for the act of cutting the branches of tree. The accident was therefore in relation to a motor vehicle. Therefore, it was a clear case of accidental death giving a right to the legal heirs to maintain a claim petition before the Motor Accident Claims Tribunal. We are of the view that the Tribunal was justified in entertaining the claim petition and adjudicating the same in accordance with the provisions of the Motor Vehicles Act. We therefore find no reason to entertain this appeal.

16. In the upshot, we dismiss the Civil Miscellaneous Appeal, without any liability to pay costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Judge, IV Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai

Copy to:

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

+1cc to Mr. J. Chandran, Advocate, S.R.No.59688

C.M.A.No.1544 OF 2018

MP (CO)

GSP (13/11/2018)