

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1614 of 2016

The Commissioner,
Salem Municipal Corporation,
Salem-636 001.

..Appellant/1st Respondent

Versus

1.Muniappan
2.Jothimani

...Respondents 1 & 2/Petitioner

3.The Divisional Manager,
The New India Assurance,
Company Limited,
Meyyanur, Salem-636 004. ...3rd Respondent/2nd Respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 07.04.2016 made in M.C.O.P.No.2000 of 2011 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

For Appellant : Mr.S.Diwakar
For Respondents : Mr.V.Vijayakumar [for R1 & R2]
Mr.C.Ramesh Babu [for R3]

J U D G M E N T

The Appellant/ Salem Municipal Corporation has filed this appeal against the judgment and decree dated 07.04.2016 made in M.C.O.P.No. 2000 of 2011 on the file of the Motor Accident Claims Tribunal, Special District Judge, Salem.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioners is that on 05.10.2011 at about 12.20p.m. while the deceased Nandhini was travelling as a pillion rider in a two wheeler bearing Registration No.TN-54-A-2707 driven by her Grandfather Mariyappan, in Kalarampatty Main Road, a tractor bearing Registration No.TN-27-H-0807, came from behind at high speed and dashed against the two wheeler, in which, the deceased Nandhini and her sister were coming with their Grandfather. In the impact, as the deceased Nandhini fell down, the tractor ran over the head of the deceased, resulting in her death. The accident occurred only due to rash and negligent driving by the driver 1st respondent/Salem Municipal

Corporation vehicle. The deceased Nandhini was aged 13 years and she was studying 7th standard. Thus, the petitioners, who are the parents of the deceased, seek a sum of Rs.10,00,000/- as compensation from the 1st and 2nd respondents who are the owner and insurer of the vehicle.

4. On the other hand, opposing the petition by filing the counter, the 1st respondent/Salem Municipal Corporation contends that the claim of the petitioners is exorbitant. The manner of accident as claimed by the petitioners is not correct. The driver of the tractor was proceeding in slow speed and careful manner, but the accident occurred only due to the fault of the two wheeler rider who suddenly tried to cross the road without following the traffic rules and failing to see the vehicle which was coming behind him. The driver of the two wheeler did not possess any driving license and the accident occurred due to carelessness of two wheeler driver. The owner and insurer of the two wheeler are necessary parties to the case. The 1st respondent/Salem Municipal Corporation disputing the averments of the petitioners in every aspect seeks dismissal of the petition, since the accident occurred only due to the negligence of the two wheeler rider, in which, the deceased was travelling. The 1st respondent further states that as per the records, on 05.10.2011, the duty driver of the vehicle involved in the accident was one A.Ravichandran and he drove the vehicle properly and he was not responsible for the accident. According to the 1st respondent/Salem Municipal Corporation, immediately after the accident, the crowd gathered there and the said A.Ravichandran, left from the accident place, requesting one Murthy, who is the daily worker of the 1st respondent/Salem Municipal Corporation to take care of the vehicle. However, the police falsely filed a charge sheet against the said Murthy and he is contesting the criminal case before the Judicial Magistrate II, Salem. The duty driver of the vehicle was having valid license and the accident occurred not due to the negligence on the part of the 1st respondent/Salem Municipal Corporation driver. Hence, the 1st respondent/Salem Municipal Corporation seeks dismissal of the petition.

5. Likewise, disputing the claim of the petitioners by filing counter, the 2nd respondent/Insurance Company disputes the manner and nature of the accident involving the 1st respondent/Salem Municipal Corporation vehicle. According, to the 2nd respondent/Insurance Company, the driver of the tractor bearing Registration No.TN-27-H-0807 did not possess any valid driving license. On the accident date, the vehicle was driven by the labourer of the Corporation engaged for a cleaning work. The claim of the petitioners is very arbitrary. The 2nd respondent/Insurance Company seeks dismissal of the petition,

since the accident did not occur due to the negligence of the 1st respondent/Salem Municipal Corporation tractor driver.

6. Before the Tribunal, the petitioners examined as P.W.1 and P.W.2 and produced documents Exs.P1 to P5 to prove their claim. On the side of the respondents, R.Ws.1 to 4 were examined and documents Exs.R1 to R9 were marked. Further, the Tribunal marked Court documents Exs.X1 to X7. After analysing the materials available on record, the Tribunal found that the 1st respondent/Salem Municipal Corporation vehicle driver alone was responsible for the accident and as the driver of the vehicle, one Murthy, was not having valid driving license and as the same amounts to violation of the insurance policy condition, held the owner of the vehicle, the 1st respondent/Salem Municipal Corporation alone liable to pay the compensation and directed the 2nd respondent/Insurance Company to pay the entire award amount and recover the same from the 1st respondent/Salem Corporation. Aggrieved over the said finding of the Tribunal, the 1st respondent/Salem Municipal Corporation has come forward with the present appeal.

7. The main contention of the 1st respondent/Salem Municipal Corporation is that the Tribunal failed to consider the evidence properly, regarding the driver of the vehicle who possessed valid driving license. According to the 1st respondent/Salem Municipal Corporation, the driver of the vehicle, A.Ravichandran had valid driving license and the same is produced as Ex.R2. Hence, the 1st respondent/Salem Municipal Corporation contends as the driver of the vehicle, A.Ravichandran was having valid license as evidenced by Ex.R2, there is no violation of policy condition and as such, the direction of the Tribunal to the 2nd respondent/Insurance Company to pay and recover the award amount from the 1st respondent/Salem Municipal Corporation is unwarranted and the same is liable to be set aside. Hence, the 1st respondent/Salem Municipal Corporation seeks to allow the appeal and to set aside the award passed by the Tribunal directing the 2nd respondent/Insurance Company to pay and recover the amount from the 1st respondent/Corporation.

8. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the vehicle driver of the 1st respondent was not having valid license and as such, the conclusion and direction of the Tribunal to pay and recover the amount from the owner of the vehicle is just and proper and same needs no interference. Thus, the 2nd respondent/Insurance Company seeks dismissal of the appeal.

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

10. Before this Court, the learned counsel for the Appellant/1st respondent/Salem Municipal Corporation contended the only issue relating to pay and recovery of the award amount by the Insurance Company as directed by the Tribunal. The finding of the Tribunal regarding the negligence and liability to pay compensation to the petitioners are not seriously disputed. Thus, the only issue to be considered is whether the 1st respondent/tractor driver possessed valid driving license on the date of accident. According to the 1st respondent/Salem Municipal Corporation, as per the records available, one A. Ravichandran was on duty to drive the tractor bearing Registration No.TN-27-H-0807, on the occurrence date and the said person was having valid driving license. The copy of the Driving license of said A.Ravichandran is produced by the respondent as Ex.R2. However, the said A.Ravichandran is not examined before the Tribunal to prove the claim of the 1st respondent, but contradicting the same, the manager of the 2nd respondent/Insurance Company who deposed as R.W.2 stated that on the occurrence date viz., 05.10.2011, the said tractor bearing Registration No.TN-27-H-0807 was driven by one Murthy S/o.Perumal and the Salem Police have registered a case in Crime No.523/2011 against the said Murthy only. The copy of the said F.I.R., is produced as Ex.X.1. After investigation, the police have filed Ex.R.8-Charge Sheet, against the said Murthy only. It is also evident from Ex.X.2, Vehicle inspection report of RTO that the driver of the vehicle was not having license on that date. Similarly, the Motor vehicle inspection Report report Ex.X4 also mentioned about the tractor driver not possessing valid license, on the fateful day. It is also clear from Ex.R.6 that action was initiated against the said Murthy, driver of the tractor for not possessing valid license for driving the vehicle. It is further pointed out that the said Murthy admitted his guilt and paid the fine amount in the Criminal Court as Ex.X.7-Fine Receipt. It is also pointed out that the said Murthy was arrested as per Ex.R.7-Arrest Report. It is further clear from the above said evidence, on the date of accident, the driver of the tractor of the 1st respondent Corporation was not having any valid license.

11. However, the 1st respondent/Salem Municipal Corporation contends that the vehicle was driven not by Murthy, but by A.Ravichandran and he was having valid license as evidenced by Ex.R.2. The person who deposed as R.W.1, on behalf of the 1st respondent stated that on 05.10.2011, only A.Ravichandran was the driver of the tractor and the same is reflected in the record books, wherein the Engineer and Commissioner of the Corporation have countersigned. Even though, the 1st respondent claims that the vehicle was driven by A. Ravichandran, the police have not only registered the case against one Murthy, but

after investigation laid the charge sheet also against the said Murthy, who subsequently admitted his guilt and paid the fine amount in the Criminal Court, which clearly disproves the claim of the 1st respondent/ Salem Municipal Corporation, about one A.Ravichandran being driver of the vehicle on the accident date. If really A.Ravichandran has driven the vehicle, the other person, Murthy, would not have admitted his guilt and paid fine amount in the criminal case. The said A.Ravichandran is also not examined before the Tribunal, in such circumstances, the plea of the 1st respondent/Salem Municipal Corporation that the vehicle was driven by one A.Ravichandran and he possessed valid driving license on the accident date cannot be accepted for want of clear evidence.

12. In such circumstances, as the quantum of the award and the negligence aspect of the award passed by the Tribunal has not been challenged and the only issue raised by the 1st respondent/Salem Municipal Corporation being negatived, the appeal has to fail. The point is answered. Appeal dismissed. No cost.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bri
To

1.The Motor Accident Claims Tribunal,
Special District Judge, Salem.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.Diwakar, Advocate Sr.No.12206 dt.4.5.2018
+1cc to Mr.C.Ramesh Babu, Advocate Sr.No.12074 dt.4.5.2018
+1cc to Mr.V.Vijayakumar, Advocate SR.No.12296 dt.4.5.2018

VGII(CO)
sm:19.3.2018

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