

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2218 of 2016

Cholamandalam MS General Insurance Co. Ltd.,
Rep. by its Branch Manager,
Having Office at Dare House 2nd Floor,
No.2,N.S.C. Bose Road, Chennai. ... Appellant/
2nd Respondent

...vs...

1.Murugesan
2.Sanjai (Minor)
3.Santhosh (Minor) ... Respondents/
(Respondents 2 & 3 are minors 1 to 3 Petitioners
rep. by father and NF
first respondent)
4.Karthikeyan ...4th Respondent/
1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 29.03.2016 made in MCOP.No.299 of 2014 on the file of the Motor Accident Claims Tribunal/District Court, Nagapattinam.

For Appellants : Mr.N.Vijayaraghavan

For Respondents : M/s.R.Kamala Rani for R-1 to R-4

JUDGMENT

Prayer: This civil miscellaneous appeal arises out of the Fair and Decreetal order dated 29.03.2016 made in MCOP.No.299 of 2014 on the file of the Motor Accident Claims Tribunal/District Court, Nagapattinam.

2. For sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 07.04.2014, the deceased Muthamizh Selvi was going along with her relative as pillion rider in the bicycle, in North Street, Vedharaniyam from

East to West and at that time, the Lorry bearing Registration No.TN-31-BY-9825 belonging to the first respondent and insured with the second respondent, came at high speed in the opposite direction and dashed against the above bicycle in which the deceased was travelling. Consequently, the deceased Muthamizh Selvi fell down and the wheel of the lorry crushed her head. Consequently, she died on the spot itself. This petitioners, who are the husband and sons of the deceased claims that the accident occurred only due to the negligent driving of the driver of the first respondent's lorry. At the time of accident, the deceased was aged about 28 years and she earned a sum of Rs.10,000/- per month by doing cooli work and also growing goats. Due to her sudden demise, the first petitioner lost his conjugal rights and all the three petitioners lost the love and affection of their mother. Hence, the petitioners seeks a sum of Rs.20,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent Insurance Company contends that the driver of the lorry was not having valid driving license and valid R.C. Book and fitness certificate was also not available. Thus, the second respondent Insurance company is not liable to pay any compensation. The bicycle in which the deceased was travelling as a pillion rider met with the accident only because of the rider of the bicycle, namely, Subramaniam drove the bicycle carelessly without noticing the on coming vehicle. The claim of the petitioners is excessive. Hence, the second respondent sought for dismissal of the petition.

5. Before the Tribunal, the first petitioner examined himself as P.W.1 and eye witness to the occurrence was examined as P.W.2, petitioner produced documents Ex.P1 to Ex.P7 to substantiate their claim. On the side of the respondents R.W.1 and R.W.2 were examined and produced Ex.R1 to Ex.R4 were marked to prove their case.

6. On the basis of available material before it, the Tribunal passed an award granting Rs.7,33,000/- with 7.5% interest to the petitioners. Aggrieved over the said finding of the Tribunal, the second respondent Insurance Company has come forward with this appeal.

7. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

8. The learned counsel appearing for the second respondent Insurance Company contends that as the first respondent allowed a person without valid license to drive the vehicle, the entire

liability cannot be fixed on the second respondent herein. Further, the Tribunal failed to consider that there is no driving license for the first respondent's driver, the driver of the offending vehicle committed violation of policy condition. However, the first respondent owner alone is liable to pay the compensation and the second respondent/Insurance Company has to be exonerated. Thus, the second respondent seeks to entertain the appeal and to set aside the impugned award passed by the Tribunal.

9. Per contra, the learned counsel for the petitioners/claimants contends that the fact of alleged accident and negligence on the part of the first respondent's driver is not disputed in the appeal. Further as the only contention of the second respondent is that the policy condition has been violated, the second respondent insurance company cannot avoid its liability. At best it can only seek for payment to recover the award amount from the first respondent after effecting payment to the petitioners/claimants. Hence, the petitioners/claimants sought for dismissal of the appeal.

10. Admittedly, the finding of the Tribunal that the negligence of the first respondent driver alone is responsible for the accident as well as the conclusion arrived at about the age, avocation and income of the deceased Muthamizh Selvi is not agitated by the second respondent insurance company. Hence, the award of the Tribunal giving Rs.7,33,000/- as compensation to the petitioners is to be confirmed. The petitioners has not come forward any appeal or cross appeal.

11. The only contention of the second respondent insurance company is that there is a violation of policy condition and hence they are entitled to recover the award amount from the owner of the vehicle who is the first respondent herein. Admittedly, the Tribunal found, on the basis of evidence of P.W.1 and P.W.2 and also on the basis of Ex.R2 to R4 documents, that the driver of the first respondent lorry was not having valid license at the time of the accident. The staff of RTO Office, Nagapattinam who deposed as R.W.1 and Assistant Manager of the second respondent Insurance Company as R.W.2 have clearly stated about policy condition violation, the Tribunal after analysing the evidences of R.W.1 and R.W.2 found that the driver of the first respondent lorry was not having valid license. The said fact is not contradicted and disputed by the first respondent, who remained exparte. In such circumstances, it is contended by the second respondent relying upon Ex.R4 Policy Certificate terms that the first respondent by permitting a person without valid license to drive the lorry committed violation of police condition. The said contention is just and proper and the same is to be accepted. As the owner of the vehicle/the first respondent herein committed violation of policy condition, the second respondent insurance company is

entitled to recover the amount paid by them, as per the award passed by the Tribunal from the owner of the vehicle who is the first respondent herein. In such circumstances, as the quantum of compensation awarded by the Tribunal is just and proper, the same needs no interference. However, as there is a violation of condition policy, the second respondent insurance company is entitled to recover the award amount paid by them from the first respondent/owner of the vehicle. The point is answered accordingly.

12. In the result, this civil miscellaneous appeal is partly allowed. The compensation awarded by the Tribunal is confirmed. However, the second respondent Insurance Company is directed to pay the entire compensation award amount to the petitioners/claimants and thereafter recover the same from the first respondent/the owner of the vehicle. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

rrg
To
The Motor Accident Claims Tribunal
District Judge,
Nagapattinam.

+1cc to Mr.R.KAMALARANI, Advocate, S.R.No. 8046
+1cc to Mr.B.GOPALAN, Advocate, S.R.No. 8092

C.M.A.No.2218 of 2016

MR (CO)
TR(26/02/2018)

सत्यमेव जयते

WEB COPY