

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2627 of 2015

1. Selva Shanthini

2. Minor Subhashini

3. Minor Asvitha

Appellants 2 & 3 rep. By their
Natural Guardian & Mother
Selva Shanthini

... Appellants/Claimants

-vs-

1. R. Hemavathi

2. The Manager,
ICICI Lombard General Insurance Co. Ltd.,
No.132, Nungambakkam High Road,
Chottabhai Centre,
Chennai 24. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 (1) of Motor Vehicles Act, 1988, against the Judgment and decree dated 09.04.2011 made in MCOP. No.669 of 2008 on the file of the Motor Accidents Claims Tribunal-cum-Additional District & Sessions Judge (Fast Track Court No.III), Chennai.

For Appellants : Mr.K.Premkumar

For Respondents: Mrs.R.Sri Vidhya for R2
No appearance for R1

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The claimants who are the wife and minor daughters of one Ramamoorthy, who died in a motor accident that occurred on 29.12.2007 are the appellants. The challenge in this Appeal is mainly to the finding of the Tribunal that the Insurance Company is not liable to pay the compensation, inasmuch as the deceased was travelling as a gratuitous passenger in the goods vehicle.

2. The case of the claimants before the Tribunal was that the deceased Ramamoorthy was travelling in the goods vehicle, namely Eicher Lorry, bearing Registration No.KA-51-5622 from Hosur to Chennai, as the owner of the goods, namely furniture and other office equipments, which were meant for his Transport Office to be opened at Chennai. It is also averred that the said Ramamoorthy owned a fleet of Lorries and he had planned to open an Office at Koyambedu. With that object he had loaded the furniture and other office equipments from Hosur in the lorry owned by the 1st respondent and insured with the 2nd respondent. He along with his assistant were travelling in the said vehicle. While the vehicle was nearing Thullanthandalam Village, at about 6.00 a.m. on 29.12.2007, lorry which was driven by its driver in a rash and negligent manner dashed against another lorry which was proceeding ahead of it. As a result of the impact Ramamoorthy, who was sitting on the left side of the lorry suffered grievous injuries and died on the spot. The driver of the vehicle left the vehicle on the road and fled. The claimants had sought for a compensation of Rs.10,00,000/- for the death of the said Ramamoorthy. It is claimed that Ramamoorthy was owning about four lorries earning about Rs.30,000/- per month.

3. The claim was resisted by the Insurance Company mainly contending that the FIR lodged by the assistant of Ramamoorthy, namely one Murali does not disclose that Ramamoorthy was travelling in the goods vehicle as the owner of the goods. Therefore, according to the Insurance Company, the said Ramamoorthy being an unauthorised passenger in the goods vehicle, the Insurance Company is not liable to indemnify the owner. The Insurance Company also denied the particulars regarding the age and income of the deceased.

4. The Tribunal on an assessment of the evidence of records, particularly the FIR which was marked as Ex.P1, concluded that the accident was due to the rash and negligent driving of the driver of the lorry bearing Registration No. KA-51-5622. On the question of liability, the Tribunal concluded that the deceased was not travelling in the lorry of the owner of the goods, but he was a gratuitous passenger. On the said finding, the Tribunal absolved the Insurance Company of any liability and directed the owner, namely the 1st respondent to pay the compensation.

5. The Tribunal determined the compensation payable at Rs.12,68,000/-. The Tribunal also apportioned the compensation at Rs.3,50,000/- each to the minor daughters and Rs.5,68,000/- to the wife.

6. Aggrieved the claimants are on appeal.

7. We have heard Mr.K.Premkumar, learned counsel appearing for the appellant and Mrs.R.Srividhya, learned counsel appearing

for the 2nd respondent/Insurance Company. The 1st respondent though served does not appear either in person or through counsel.

8. Mr.K.Premkumar, learned counsel appearing for the appellants would contend that the Tribunal was not right in basing its conclusion only on the FIR, said to have been registered on the information given by one Mr.Murali, who had accompanied the said Ramamoorthy in the lorry. The FIR states that the said Ramamoorthy and the defacto complainant were travelling in the lorry from Hosur to Chennai for the purpose of meeting a Transport Contractor at Koyambedu. The Insurance Company has not chosen to examine the driver or the owner of the lorry. It has examined one of its officer as R.W.1 and marked certain documents. The first claimant, wife, has been examined as P.W.1 and one Kannan, examined as P.W.2. The 1st claimant had deposed that the deceased intended setting up a Transport Office at Chennai and he had loaded the office furniture and other equipments for the said purpose in the lorry and he was travelling in a lorry along with the goods belonging to him.

9. Pointing out to the said evidence as well as the fact that the deceased Ramamoorthy, apart from owning 4 lorries were also having a private car, therefore, it was wholly unnecessary for him to travel as a gratuitous passenger in a goods vehicle. We have considered the evidence of P.W.1. We find that her evidence regarding the purpose of travelling has not been belittled in cross-examination. There is no contra-evidence on the side of the Insurance Company, except the contents of the FIR. We find that the Tribunal has solely gone by the FIR concluded that the deceased Ramamoorthy was a gratuitous passenger in a goods vehicle. The Tribunal has not considered the evidence of P.W.1. We are, therefore, of the considered opinion that the Tribunal has committed an error in concluding that the deceased was travelling as a gratuitous passenger. The Motor Vehicle Inspection Report would show the goods that were loaded in the lorry at the time of the accident. The Insurance Company has not taken any steps to produce the same. We, therefore, conclude that the deceased was travelling in the lorry as the owner of the goods.

10. Neither the owner nor the Insurance Company has challenge the quantum of compensation. We also find that the quantum of compensation is just and reasonable, in the light of the evidence produced in the Form of Income Tax Return as Ex.P5. Therefore, we do not see any ground to interfere with the quantum of compensation arrived at by the Tribunal. Since we have find that the deceased was traveling as an owner of the goods in the lorry, we do not think that the Insurance Company could be absolved of the liability to pay the compensation.

11. In fine, the Appeal is allowed. The award of the

Tribunal is set aside, insofar as it directs the owner of the lorry to pay the compensation. We find that the Insurance Company is liable to indemnify the owner of the lorry, inasmuch as we have concluded that the deceased was travelling in a lorry as the owner of the goods not as a gratuitous passenger. The award of the Tribunal is also modified directing the Insurance Company is to pay the compensation. The apportionment made by the Tribunal is confirmed. However, there shall be no order as to costs.

12. The Insurance Company is directed to deposit the award amount, within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the major claimant, namely, the 1st appellant will be entitled to withdraw her share of the compensation. The Tribunal is directed to deposit the share of the minors, namely, the appellants 2 & 3, in an interest earning fixed deposit in any one of the Nationalised Banks till they attain majority and the mother namely the 1st appellant will be entitled to withdraw quarterly interest from the fixed deposit for the maintenance of the minors.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jv

To

The Motor Accidents Claims Tribunal-cum-
Additional District & Sessions Judge
(Fast Track Court No.III),
Chennai.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+lcc to Mr.R.Sreevidya, Advocate, S.R.No. 65271
+lcc to Mr.K.Prem Kumar, Advocate, S.R.No. 64905

CMA.No.2627 of 2015

SSI(CO)
GN(01/11/2018)