IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.277 of 2010
and
CMP.No.14493 of 2016

National Insurance Co. Ltd.,
Divisional Office III,
Mamanji Centre,
S-7, Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai-600 032. ... Appellant/2nd respondent

..vs..

1.Poongodi
2.Minor.Santhiya
3.Minor Sathiya Narayanan
4.Minor Sarath Pandi
(Minor 2 to 4 rep. by their mother and Next friend)
5.Lakshmi ... Respondents 1 to 5/ Petitioners
6.S.Samuthiram ... 6th Respondent/1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 07.07.2009 made in MCOP.No.271 of 2005 on the file of the Motor Accident Claims Tribunal/I Additional Sub Judge, Salem.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.M.R.Thangavel for R1 to R5
R-6 set exparte before the Tribunal
Notice to R-6 dispensed with.

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 07.07.2009 made in MCOP.No.271 of 2005 on the file of the Motor Accident Claims Tribunal/I Additional Sub Judge, Salem, the present appeal has been filed by the 2nd respondent-Insurance Company to set aside the award passed by the Tribunal.

2.For the 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 16.02.2004 at about 02.00 hours, while the deceased Dhanaraj was travelling in the Lorry bearing Registration No.TN-38-V-6404 belonging to the first respondent and insured with the second respondent from Villupuram to Salem, while going near Ayyothiyapattinam 6th mile stone petrol bunk, due to the rash and negligent driving by the driver of the said Lorry, to avoid dashing against the bus, which was coming in the opposite direction, the driver of the above said lorry turned the Lorry to the left side, but dashed against the another lorry bearing Registration No.KA-01-C-6586, which was going ahead of the lorry, in which the deceased was travelling, and due to it, the deceased suffered grievous injuries and subsequently died. The accident occurred only due to the negligence of the driver of the first respondent lorry. The deceased was aged 30 years and by carrying on his own sound service system was earning Rs.10,000/- per month. The petitioners who are the wife, children and mother of the deceased were depending on the income of the deceased. Due to the sudden death, the petitioners lost the bread winner of their family. The petitioners also lost the love and affection of the deceased. Thus, the petitioners sought for a sum of Rs.10,00,000/- as compensation from the respondents.

4.On the other hand, opposing the claim petition, the second respondent Insurance company filed counter contending that the accident does not occur due to the negligence of the first respondent lorry driver. While the first respondent lorry bearing Registration No.TN-38-V-6404 came near Ayyothiyapattinam 6th mile stone petrol bunk, another lorry bearing Registration No.KA-01-C-6586, which was going ahead of the first respondent lorry, all of a sudden without any signal suddenly stopped and and inspite of best efforts to avoid dashing against it, the first respondent lorry dashed on the back side of the lorry bearing Registration No.KA-01-C-6586. The accident occurred only due to the composite negligence of both the vehicle drivers. The petitioners ought to have impleaded the owner and insurer of the lorry bearing Registration No.KA-01-C-6586. The petition is to be dismissed for non jointer of necessary parties. The deceased Dhanaraj travelled in the first respondent lorry as unauthorised passenger, the same amounts to violation of policy and permit conditions. The second respondent Insurance Company is not liable to pay compensation. The amount claimed by the petitioner is highly excessive. The claim of the petitioners about the age, avocation and income of the deceased is denied. Thus, the second respondent Insurance Company sought for dismissal of the petition.

5.Before the Tribunal, the petitioners examined P.W.1 to P.W.3, produced documents Ex.P1 to Ex.P9 to substantiate their claim. The respondents examined R.W.1 and 2, produced documents Ex.R1 and Ex.R2 counter and contradict the claim of the petitioners.

6.The Tribunal, on careful analysis of evidence, found the negligence of the first respondent's Lorry driver alone caused the accident, passed an Award for a sum of Rs.5,37,700/- payable by the respondents to the petitioners. Aggrieved over the said findings of the Tribunal, the second respondent Insurance Company has come forward with this present appeal.

7.I have heard the learned counsel appearing for the appellant/2nd respondent Insurance Company and the learned counsel appearing for the respondents 1 to 5/petitioners and perused the materials available on record.

8.The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the owner of the vehicle violated the policy conditions by permitting 8 passengers to travel in the goods vehicle. The Tribunal failed to appreciate the fact that there was no evidence available on record to prove that the deceased travelled along with his electronic goods in the vehicle. The Tribunal ought to have rejected the evidence of P.W.1 to P.W.3 regarding the deceased travelling with goods. Nothing was stated about the same in the FIR and in the claim petition. As per Ex.R1 Policy, the second respondent Insurance Company is not liable to pay any amount to the gracious passengers. The Tribunal failed to consider the same appropriately. The Tribunal failed to consider the fact that under Section 2(13) of the Motor Vehicles Act carrying electronic items by the deceased will not be considered as travelling with goods. The Tribunal failed to consider the evidence of R.W.1 and R.W.2 and the contents of Ex.R1 and Ex.R2 appropriately. The petitioners examined P.W.3 subsequently after the respondents evidence was closed only to claim compensation from the appellants on the ground of the deceased travelled with his goods. The conclusion of the Tribunal is against the rulings of the Apex Court. The award passed by the Tribunal is not proper and the same is to be set aside by entertaining the appeal.

9.Per contra, the learned counsel appearing for the respondents 1 to 5/petitioners contends that the fact of the deceased travelling with electronic goods is proved by the evidence of P.W.3 and the Tribunal correctly concluded that the deceased travelled in the first respondent vehicle along with his goods. Thus, the petitioners/claimants contends that as the deceased was travelling with goods, they are entitled to seek compensation from the respondents 1 and 2. The conclusion of the Tribunal regarding the negligence and also the quantum of the compensation arrived at is just and proper. Hence, there is no need to interfere with the same. Thus, the respondents 1 to 5/Petitioners sought for dismissal of this appeal.

10.The main contention of the appellant/second respondent Insurance company is that the deceased travelled in the goods vehicle of the first respondent as an unauthorised passenger and the same is in clear violation of the insurance policy condition and also the vehicle permit rules. Thus, the second respondent Insurance Company sought for setting aside the award passed against them.

11.Both sides have not seriously contested the findings of the Tribunal about the negligence of the first respondent vehicle driver causing the accident. The eye witness to the occurrence who deposed as P.W.2 has clearly stated about the manner in which the accident occurred. Further, the police have registered Ex.P1 First Information Report against the first respondent vehicle driver only. After completion of investigation, the police laid charge sheet against the first respondent lorry driver as evidenced by Ex.P3 copy of the Charge Sheet. The driver of the first respondent lorry admitted his guilt and paid a sum of Rs.4,500/- as fine before the Criminal Court. The same is clearly established by Ex.P5 Judgment copy of the Criminal Court. On the other hand, the respondents have not let in any clear cut evidence to disprove the petitioners version of the accident. As such, on the basis of P.W.2 evidence as well as the contents of Ex.P1 First Information Report, Ex.P3 Charge Sheet and Ex.P6 copy of the Judgment passed by the Criminal Court, the conclusion of the Tribunal that the negligence of the first respondent vehicle driver alone caused the accident is based on proper appreciation of the evidence on record and the same does not require any interference.

12.The Tribunal after analysing the evidence on record, found that the deceased was aged 30 years, on the basis of Ex.P4 Postmortem Certificate and Ex.P8 death certificate. Further, the Tribunal concluded that the petitioners are legal heirs of the deceased as evidenced by Ex.P9 Legal Heir certificate. Likewise, relying on the evidence of P.W.1, who is the wife of the deceased and documents produced as Ex.P6 and Ex.P7, the Tribunal fixed the monthly income of the deceased at Rs.3,300/- and after deducting 1/3rd of the income of Rs.1100/- towards the personal expenses, the contribution of the deceased to the family was arrived at Rs.2,200/-. Considering the age of the deceased as 30 years, the Tribunal applied the multiplier 18 and provide a sum of Rs.4,75,200/- as loss of dependency to the petitioners.[Rs.2,200/- x 12 = Rs.26,400/- x 18 = Rs.4,75,200/-]. The Tribunal also provided a sum of Rs.30,000/- towards loss of consortium, a sum of Rs.30,000/- towards loss of love and affection to the petitioners 2 to 4 and a sum of Rs.2,500/- towards Transportation charges. Then an Award for a total sum of Rs.5,37,700/- payable by the first and second respondents who are the owner and insurer of the vehicle was passed. Considering the fact that the accident occurred during 2004, and there is no appeal filed by the claimants seeking any enhancement of the award amount, the quantum of award passed by the Tribunal granting a sum of Rs.5,37,700/- as compensation is just and proper and the same is confirmed.

13.The fact that the vehicle involved in the accident bearing Registration No.TN-38-V-6404 belongs to the first respondent and the same was insured with the appellant/second respondent Insurance Company is admitted. Pointing it out, the learned counsel appearing for the petitioners claimants contended that as the owner and insurer of the vehicle, the respondents 1 and 2 are liable to pay compensation. However, refuting the same, the learned counsel appearing for the appellant/2nd respondent Insurance Company contends that even though the policy coverage was in force, the deceased was carried in the lorry as un authorised passenger and it amounts to clear violation of policy condition, as there is no provision under the policy taken by the first respondent to pay for unauthorised passenger . The driver of the lorry in which the deceased travelled deposed as P.W.3, in his evidence stated that only after getting permission from the vehicle owner, he permitted the deceased to travel in the lorry along with the electronic goods. After the occurrence, the goods was handed over to the wife of the deceased by him. P.W.3 also stated that the deceased travelled in the lorry by paying Rs.350/- as rent. Relying upon the said evidence of P.W.3, the Tribunal concluded that the deceased travelled with his electronic goods by making payment and as such he cannot be termed as and unauthorised passenger in the goods vehicle.

14.Disputing the said conclusion of the Tribunal, the learned counsel appearing for the appellant/2nd respondent Insurance Company contends that even assuming electronic goods was carried by the deceased, the same will not enable him to claim that he tavelled along with the goods in the vehicle. It is pointed out that under Section 2(13) of the Motor Vehicles Act, electronic items are not considered as goods and therefore, the claim of the petitioners is untenable. Section 2(13) of the Motor Vehicles Act reads as follows:-

> "(13) "goods" includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle."

It is clear from the same that even if the deceased has travelled in the vehicle along with his electronic goods, he cannot treated on a passenger travelling with goods. Thus, the contention of the Insurance company is to be accepted.

15.Further, it is also pointed out that even though P.W.3 deposed about the deceased travelling with electronic goods, he was not examined at the first instance, but only after the respondents evidence was over, the petitioner examined P.W.3 to prove his claim. As pointed out by the learned counsel appearing for the appellant/second respondent Insurance Company that there is no averments in the claim petition about the deceased travelling with electronic goods. Further, in Ex.P1 First Information Report also nothing is mentioned about the electronic goods carried by the deceased. Thus, the evidence of P.W.3 is not supported by the contents of Ex.P1 First Information Report and pleadings in the claim petition.

16.Pointing it out, the learned counsel appearing for the appellant/second respondent Insurance Company contends that only to the enable petitioners to get compensation, the evidence of P.W.3 was subsequently let in and the same should not be relied upon. It is true that in the claim petition and Ex.P1 First Information Report nothing is mentioned about the deceased travelling with electronic goods and there is no description of the nature of electronic goods carried by him. Further, there is no explanation forth coming as to why P.W.3 was not examined initially, but deposed only after the respondent evidence was over. In such circumstances, doubt arises as to whether really the deceased travelled with goods in the first respondent Lorry.

17.In the light of the above said discussions, it is apparent that in the absence of any pleadings and failure to mention about the electronic goods in Ex.P1 First Information Report, the contention of the petitioners that the deceased travelled with electronic goods cannot be entertained and the same has to fail. Further under Section 2(13) of the Motor Vehicles Act, electronic goods is not to be treated as goods. As such, there is no evidence to prove that the deceased travelled with electronic goods in the first respondent vehicle at the time of the accident. Thus, it is apparent that the deceased travelled in the first respondent vehicle as unauthorised passenger only, and the same will amount to clear violation of the police condition. Therefore, the contention of the appellant/second respondent Insurance Company that they are not liable to pay compensation due to violation of policy condition is to be accepted and the appellant/2nd respondent Insurance Company is to be exonerated. The point is answered accordingly.

18.In the result, the Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal against the appellant/2nd respondent Insurance Company is set aside, thereby fixing the entire liability on the 6th respondent/owner of the vehicle bearing Registration No. No.TN-38-V-6404. The quantum of Award passed by the Tribunal is confirmed. The award amount if any deposited by the appellant/2nd respondent Insurance Company shall be refunded. The 6th respondent/owner of the vehicle is directed to deposit the entire award amount with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 to 4/petitioners 1 to 4 are entitled to get Rs.1,25,000/- each of the award amount and the 5th respondent/5th petitioner is entitled to get Rs.37,000/- in the award amount. The respondents 1 and 5/petitioners 1 and 5 are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The respondents 2 to 4/petitioners 2 to 4 are minors, their share amount shall be deposited in any one of the Nationalized Bank till they attain majority. The first respondent/first petitioner is entitled to withdraw the accrued interest once in three months. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The I Additional Sub judge,
Motor Accident Claims Tribunal,
Salem.

+1cc to Mr.M.R.Thangavel, Advocate SR.NO.43308
+1cc to Mr.S.Arunkumar, Advocate SR.NO.43671

SJ(CO)
sm:29.10.2018

C.M.A.No.277 of 2010