

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-03-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU
Civil Miscellaneous Appeal No. 2053 of 2012

1. Arun
2. Minor. Indumathi
3. Minor. Geetha
Minors are represented by their
further and next friend Arun .. Appellants/Petitioner

Versus

1. Eswaran
2. The Divisional Manager
The New India Assurance Company Limited
No.1, Officer's Line
CSI Building, Vellore - 1
3. G. Sreenivasa Reddy
4. The Manager
Bajaj Alliance General Insurance Co., Ltd
Ongole
Andhra Pradesh
(Respondents 3 and 4 are impleaded as per
Order dated 23.03.2018 made in CMP No.
6178 of 2017) .. Respondents/Respondents

Appeal filed under Section 173 of The Motor Vehicles Act
against the Judgment and Decree dated 30.12.2011 made in
M.C.O.P. No. 49 of 2010 on the file of the Motor Accident
Claims Tribunal, Additional District and Sessions Judge, Fast
Track Court, Vellore.

For Appellants : Mr. K. Suryanarayanan
For Respondents : No appearance for R1 and R3
Mr. K. Needhiperumal for R2
Mr. Srinivasa Ramalingam for R4

JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

Challenging the award dated 30.12.2011 passed by the Motor
Accident Claims Tribunal, Additional District and Sessions
Judge, Fast Track Court, Vellore in MCOP No. 49 of 2010, the
claimants have come forward with this Civil Miscellaneous
Appeal.

2. The claimants are the husband and daughters of the deceased Saraswathi. According to the claimants, on 01.02.2010, at about 1.55 am, when the deceased was travelling in the car bearing Registration No. TN 33 AP 8899 near Balamurugan TVS showroom, in the National Highways leading from Chennai to Bangalore, at Vellore, the car in which the deceased travelled was driven by its driver in a rash and negligent manner and dashed against the backside of the on going lorry bearing Registration No. AP 27 X 4599. In the impact, the deceased sustained grievous injuries on her head and other vital parts of her body. The deceased was taken to CMC Hospital, Vellore where, inspite of treatment given, she succumbed to the injuries. According to the claimants, the deceased was conducting a Television Channel business through which she was earning Rs.15,000/- per month and due to her sudden death, the claimants were deprived of the income of the deceased. The claimants have therefore filed the Claim Petition seeking compensation of Rs.30,00,000/- as compensation.

3. The first respondent/owner of the car has filed a counter affidavit contending that the deceased did not run any private Television Channel as alleged and the claimants are put to strict proof of the same. It is further contended that the claimants never depended on the income of the deceased and therefore, the claim for compensation of Rs.30,00,000/- is exorbitant. Furthermore, at the time of accident, the driver of the car, in which the deceased was travelling, had driven the car at a normal speed, but it was the on-going granite stone laden lorry which was driven in a haphazard manner and suddenly swerved to the path in which the car was coming behind, without noticing the car. Therefore, according to the first respondent, due to the negligent driving of the driver of the lorry, the accident had taken place and therefore, the owner of the lorry and the insurance company with which the lorry was insured are proper and necessary parties for adjudication of the claim petition. The first respondent also contended that the first claimant also sustained injuries in the same accident for which he had separately filed MCOP No. 233 of 2010 on the file of Chief Judicial Magistrate, Vellore. According to the Insurance Company, the averments contained in MCOP No. 233 of 2010 would belie the factum of income of the deceased in this claim petition and therefore he prayed for dismissal of the Original Petition.

4. The Claim Petition was resisted by the second respondent/insurance Company by filing a counter contending that the deceased was not carrying any Television channel business and earning Rs.15,000/- per month, as alleged. It was further stated that the Car No. TN 33 AP 8899 was insured with the second respondent/Insurance company as a private car, for private use and not as a Taxi. However, at the time of accident, the vehicle was used for transportation of the deceased and her family who are unconnected with the family of the owner of the vehicle, first respondent in the claim petition. Therefore, according to the insurance company, there is a violation of the policy condition and consequently, they

are not liable for payment of compensation. The Insurance company would further contend that it is the driver of the lorry bearing Registration No. AP 27 X 4599 responsible for the accident and therefore, non-impleading the owner of the lorry as well as the insurance company with which the lorry was insured would be fatal to the claim of the claimants. Further, it was contended that the Driver of the Car in which the deceased travelled as an occupant had driven the vehicle at a normal speed and therefore, the insurance company cannot be mulcted with any liability to pay the compensation amount.

5. Before the Tribunal, in order to prove the averments in the claim petition, the first claimant examined himself as PW1 and Exs. P1 to P10 were marked. On behalf of the respondents in the claim petition, one Mr. Sridhar, Assistant Manager of the second respondent Insurance Company was examined and Ex.R1 was marked. The Tribunal, on analysing the oral and documentary evidence concluded that due to the accident, the front side of the car and rear side of the lorry got damaged which would indicate that both the driver of the car and the driver of the lorry were negligent in driving the vehicles. Therefore, the Tribunal directed the first respondent, owner of the Car to pay 50% of the compensation. Since the claimants did not implead the owner and insurer of the lorry bearing Registration No. AP 27 X 4599,, it was concluded that the owner of the car alone shall pay 50% of the compensation amount to the claimants. As regards compensation payable to the claimants, the Tribunal awarded a total sum of Rs.20,93,159/- as compensation out of which 50% was directed to be paid by the owner of the Car, the first respondent herein.

6. The learned counsel appearing for the claimants would contend that even though the Tribunal has awarded a sum of Rs.20,93,159/-, a direction was given only as against the first respondent to pay 50% of the amount since the claimants did not implead the owner and insurer of the lorry and thereby they were deprived of the remaining 50% amount of compensation. Therefore, during the pendency of the appeal, the claimants have filed an application in C.M.P. No. 6178 of 2017 to implead the respondents 3 and 4, owner and insurer of the offending lorry and it was allowed and they were also impleaded.

7. The learned counsel for the claimants would further contend that PW1, the husband of the deceased and who also travelled along with her in the car at the time of accident categorically stated that it was the driver of the Car who had driven the Car in a rash and negligent manner and hit the rear side of the on-going lorry and therefore, the Tribunal ought to have directed the first respondent to pay the entire compensation amount. Further, the Tribunal, without any evidence, has held that the Driver of the lorry had also contributed for the accident and since the claimants did not implead the owner and driver of the lorry as party to the claim petition, the claimants were made to deprive of the compensation amount. In such circumstances, according to the learned counsel for the claimants, the Tribunal ought to have

suo motu impleaded the owner and insurer of the lorry or directed the owner of the car to pay the entire compensation and failure to do so vitiates the Judgment of the Court below. It is also contended that the compensation awarded by the Tribunal is not in consonance with the income of the deceased. Further, the Tribunal did not award any amount except the sum of Rs.20,93,159/- towards loss of income. The Tribunal ought to have awarded some amount towards transportation, funeral expenses. The Tribunal ought to have also awarded a sum of Rs.1,00,000/- each to the claimants towards loss of love and affection especially when the deceased died at the age of 30 years and prayed for enhancement of compensation amount.

8. The learned counsel appearing for the second respondent Insurance company would support the award passed by the Tribunal by contending that since there was a violation of policy condition, the Tribunal is wholly justified in exonerating the second respondent/insurance company from paying the compensation amount to the claimants.

9. The learned counsel for the fourth respondent/Insurance Company would contend that the fourth respondent was not arrayed as a party in the claim petition. They were impleaded as fourth respondent only in this appeal. The fourth respondent was not given an opportunity to dispute the averments made in the claim petition. In such circumstances, the learned counsel for the fourth respondent only prayed for setting aside the award passed by the Tribunal and to remand the matter back to the Tribunal for fresh consideration, so as to enable the fourth respondent to put forth their defence before the Tribunal.

10. We have heard the counsel on either side and perused the records. Admittedly, the third respondent, who is the owner of the offending lorry and the fourth respondent, insurer of the lorry, were not impleaded before the Tribunal. They were impleaded only in this appeal. While so, they could not repudiate the averments made in the claim petition with respect to the alleged negligence attributed on the part of the Driver of the Lorry by the Tribunal. In such circumstances, we are of the opinion that it would be just and proper to set aside the award passed by the Tribunal to enable the third and fourth respondents herein to contest the Original Petition by letting in oral and documentary evidence, if they are so advised. If the third and fourth respondent files any documentary evidence or examine any witness, opportunity has to be granted to the claimants and the respondents 1 and 2 herein to cross-examine the witness.

11. Accordingly, we set aside the Judgment and Decree dated 30.12.2011 made in M.C.O.P. No. 49 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore. The Civil Miscellaneous Appeal is allowed. No costs. The matter is remanded back to the Tribunal for fresh consideration. The Tribunal is directed to afford an opportunity to the third and

fourth respondents herein to examine their witness or to mark the documents and also to permit those witnesses to be cross-examined by the claimants, the first respondent/owner of the car and the second respondent /insurance company. The Tribunal shall fix a date for appearance of the parties and shall dispose of the Original Petition on it's own merits within a period of four months from the date of receipt of a copy of this judgment. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

rsh

To

The Motor Accident Claims Tribunal
Additional District and Sessions Judge
Fast Track Court, Vellore.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to M/s. K. Suryanarayanan, Advocate Sr.22214
+ 1 cc to Mr. Srinivasa Ramalingam, Advocate Sr.22293
+ 1 cc to M/s. R. Neethiperumal, Advocate Sr.22405

CMA No. 2053 of 2012

RJI (CO)
EU(04/09/2018)

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