

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2872 of 2007

and

M.P.No.1 of 2007

The New India Assurance Company Ltd.,
Divisional Office, No.2, Main Road,
Dindigul - 624 001.

...Appellant/2nd Respondent

Versus

1.N.Subramani
2.Chinnammal
3.Vasanthi
4.Rajeswari
5.Suresh Babu
6.R.Balagurusamy

...Respondents/Petitioner 1 to 4
1st Respondent/3d Respondent

Civil Miscellaneous Appeal filed against the judgment and decree dated 27.06.2007 made in M.C.O.P.No.159 of 2003 on the file of the Motor Accident Claims Tribunal, Sub-ordinate Judge, Gudiyatham, Vellore District.

For Appellant : Mr. S. Jayasankar
For Respondents : Mr. G.Vinodh Kumar [for R1]

J U D G M E N T
सत्यमेव जयते

The appellant/Insurance Company has come forward with this appeal against the judgment and decree dated 27.06.2007 made in M.C.O.P.No.159 of 2003 on the file of the Motor Accident Claims Tribunal, Sub-ordinate Judge, Gudiyatham, Vellore District.

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

3. The case of the petitioners/claimants is that on 02.04.2003 at about 6.00 p.m, the 1st respondent who is the owner of the tractor bearing Registration No.TN-57-8198 was driving

the vehicle accompanied by the deceased Kathiravan and Ravi and on the way while approaching near Azhinjikuppam Kasakalvai, a cow suddenly crossed the road and to avoid dashing against it, 1st respondent-Suresh Babu turned the vehicle towards left side and as a result the tractor capsized; resulting in severe head injury to the said Kathiravan, which resulted in his death. The accident occurred due to rash and negligent driving of the vehicle by the 1st respondent - Suresh Babu driver/owner of the vehicle insured with the 2nd respondent/Insurance Company. At the time of the accident, the said Kathiravan was working as a labourer earning Rs.3,000/- per month. The petitioners/claimants who are the parents and sister of the deceased, were depending on his income. Hence, the petitioners/claimants seek a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 2nd respondent/Insurance Company contends that the owner/insurer of the tractor bearing Registration No.TN-57-8198 alone is impleaded, whereas, the owner/insurer of the trailer are not added as parties. As such the petition is liable to be dismissed for non-joinder of necessary parties. The claim of the petitioners/claimants about the nature of accident is disputed. The age, avocation and income of the deceased as alleged in the petition is denied. The accident does not occur due to the negligence of the 1st respondent as alleged by the petitioners/claimants. Hence, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners/claimants examined P.W.1 and P.W.2 and produced documents Exs.P.1 to P.8 to prove their claim. On the side of the respondents R.W.1 was examined and documents Exs.R.1 to R.4 were marked. The Tribunal, after considering the available materials on record, found that the 1st respondent negligence alone caused the accident and awarded a sum of Rs.1,39,000/- as compensation to the petitioners/claimants. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

6. The learned counsel for the 2nd respondent/Insurance Company contended that the deceased travelled as a passenger in the mudguard of the tractor but the same was not considered properly by the Tribunal. The deceased being neither employee of the owner of the tractor nor was a load man he is not entitled to seek any compensation, but the same was not considered. The insurance policy being act only policy, it does not cover the risk of the passenger and no liability can be fixed on the 2nd respondent/Insurance Company. The Tribunal failed to consider the oral evidence of R.W.1 and Ex.R.1 - Investigation report, which clearly shows that the vehicle was driven by the deceased

himself at the time of the accident. As such the 2nd respondent/Insurance Company seeks to entertain the appeal and set aside the award passed by the Tribunal.

7. On the other hand, the learned counsel for the petitioners/claimants contended that the Tribunal, after considering the available materials on record, has correctly fixed the negligence on the part of the 1st respondent and arrived at a just and proper conclusion. As such, no ground is made out by the 2nd respondent/Insurance Company to entertain the appeal. Hence, the petitioners/claimants seek dismissal of the appeal.

8. The first petitioner, who deposed as P.W.1, stated that his son deceased Kathiravan met with the accident on 02.04.2003 and died due to injuries suffered by him. However, P.W.1, has not witnessed the accident. The eye-witness to the occurrence, P.W.2 - Ravi, clearly stated that he travelled along with deceased Kathiravan, in the tractor bearing Registration No.TN-57-8198 on the occurrence date and while coming near Azhinjikuppam Kasakalvai, suddenly a cow crossed the road and to avoid dashing against the cow, the driver cum owner of the tractor Suresh babu, turned the vehicle to the left and as he lost control, the tractor capsized near Kasakalvai. P.W.2, stated that the deceased Kathiravan suffered head injury as he was crushed by the tractor tire and died on the spot. According to P.W.2, the accident occurred only in the above said circumstances. The police registered a case against the driver of the tractor, as per Ex.P.1 - Copy of the F.I.R. Subsequently, the police after completing investigation filed final report against the first respondent as evidenced by Ex.P.5 - Copy of the charge sheet and thereafter, the 1st respondent/driver of the vehicle was imposed punishment as evidenced by Ex.P.6 - STC extract, which will go to prove that the negligence of the 1st respondent driver alone caused the accident. The conclusion of the Tribunal, as such is based on proper appreciation of evidence on record. Hence, the same needs no interference. Thus, as the owner and insurer of the said tractor, the respondents are liable to pay compensation.

9. The petitioners/claimants contended that the deceased Kathiravan was aged 28 years and he was a Bachelor, working as coolie earning Rs.3,000/- per month. However, there is no proof produced for the monthly earning of the deceased. In such circumstances, the Tribunal considering the attended circumstances, fixed the monthly earning of the deceased at Rs.2,000/-. On the basis of Ex.P.7 - Postmortem report the deceased was aged 28 years. In the absence of any other age proof, the age of the deceased was fixed as 28 years. On the basis of Ex.P.7 - Postmortem report, the Tribunal keeping in mind that the deceased was a Bachelor, deducted 50% income

towards personal expenses and as the accident occurred in 2003, considering the age of the deceased, applied multiplier '11' to award a sum of Rs.1,32,000/- towards loss of pecuniary benefits. The Tribunal after awarding amounts towards loss of Love and Affection, loss of estate and funeral expenses, passed an award for a total sum of Rs.1,39,000/- payable by the respondents to the petitioners/claimants. The said quantum of the award appears to be just and proper. Even though the 2nd respondents/Insurance Company contended that the vehicle being a tractor and covered only under Act policy, the deceased having travelled as a passenger, they are not liable to pay compensation, the same was not insisted during the course of argument. The other contentions raised by the 2nd respondent/Insurance Company is not convincing. Hence as the owner and insurer of the vehicle, the respondents are liable to pay compensation to the petitioners/claimants. There is no infirmity in the award passed by the Tribunal. In the light of the above said discussion, no ground is made out by the Appellant/Insurance Company to interfere with the award passed by the Tribunal. Hence, the appeal has to fail. The point is answered accordingly.

10. In the result, the order passed by the Tribunal dated 27.06.2007 made in M.C.O.P.No.159 of 2003 on the file of the Motor Accident Claims Tribunal, Sub-ordinate Judge, Gudiyatham, Vellore District, is confirmed and the appeal is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Sub-ordinate Judge,
Motor Accident Claims Tribunal,
Gudiyatham,
Vellore District.

+1cc to Mr.Jayasankar, Advocate, S.R.No.10536

+1cc to Mr.G.Vinodh Kumar, Advocate, S.R.No.10539

C.M.A.No.2872 of 2007

SKV(CO)

GSP(02/07/2018)