

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.279 of 2008

New India Assurance Company Ltd.,
No.46,
Moore Street,
Chennai.

...Appellant

Vs

1. Sasikala
2. Minor Santhoshkumar
3. Parvathy
4. Murugan
5. Minor Vignesh
6. S.Elangovan
(R6 set exparte)

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Hon'ble Motor Accidents Claims Tribunal, Sub-Court, Kancheepuram in MCOP.No.858 of 2000 dated 21.12.2006.

For Appellant : Mr.S.Jayasankar

For Respondents : Mr.S.M.Loganathan for R1,
R2 & R5
R3 & R4 - No Appearance
R6 - Set exparte

JUDGMENT

WEB COPY

The instant appeal has been filed challenging the Award dated 21.12.2006 passed by the Motor Accidents Claims Tribunal, Sub-Court, Kancheepuram in MCOP.No.858 of 2000.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i) One Pachiyappan died as a result of an accident caused by a rash and negligent driving by the driver of the motor cycle bearing Registration No.TN-09-Y-1594 insured with the Appellant. The dependents of the deceased who are the respondents No.1 to 5 in the instant appeal preferred a claim against the Appellant before the Motor Accidents Claims Tribunal, Sub-Court, Kancheepuram in MCOP.No.858 of 2000.

(ii) The Motor Accidents Claims Tribunal by its Award dated 21.12.2006 passed in MCOP.No.858 of 2000 directed the Appellant to pay the respondents No.1 to 5, a sum of Rs.3,46,000/- together with interest at the rate of 7.5%, per annum from the date of the claim till the date of realisation.

(iii) Aggrieved by the Award dated 21.12.2006 passed in MCOP.No.858 of 2000, the instant appeal has been filed by the insurance company.

3.Heard, Mr.S.Jayasankar, learned Counsel for the Appellant and Mr.S.M.Loganathan, learned Counsel for the respondents No.1, 2 & 5.

4.The learned Counsel for the Appellant would submit that the appellant is not liable to pay any compensation as the deceased himself was a tort-feaser as seen from the FIR which reveals that the accident was caused due to drunken driving by the deceased.

5.According to the learned Counsel, the Tribunal has erroneously come to the conclusion based on the postmortem report Ex.P.2 which does not reveal that the deceased was drunken at the time of the accident.

6.The learned Counsel for the Appellant contended that the postmortem report was given after four days from the date of the accident and therefore that report ought not to have been relied upon by the Tribunal and the Tribunal ought to have relied upon the First Information Report.

7.Per Contra, The learned Counsel for the respondent Nos.1 to 5 would submit that it has been the consistent stand of the respondent Nos.1 to 5 that as seen from the claim statement as well as in their oral and documentary evidence placed before the Tribunal that the deceased was only a pillion rider and not the driver of the vehicle. He submitted that the postmortem certificate also reveals that the deceased was not under the influence of alcohol at the time of the accident.

8.This Court after having considered the materials available on record and after examining the impugned award and after

hearing the submissions of the respective counsels observes the following:

a) In the claim petition filed before the Tribunal, the respondent Nos.1 to 5 have pleaded that the deceased was only a pillion rider.

b) The Appellant though they have taken a stand that the deceased was the driver of the vehicle, have not been able to establish before the Tribunal that the deceased was the driver of the vehicle by letting in oral documentary evidence, to disprove the claim of the respondent Nos.1 to 5 that the deceased was only a pillion rider.

c) The First Information Report which discloses that the deceased was a driver of the vehicle who was under the influence of alcohol at the time of the accident has also been closed by the Police under section 468 Cr.P.C. The closure report has also been marked as exhibit by the appellant as R1 before the Tribunal. The police have closed the case since the person accused is dead.

d) The postmortem certificate, exhibit P2 does not reveal that the deceased was under the influence of alcohol at the time of the accident. The Doctor has issued the postmortem certificate has also not been examined by the Appellant insurance company before the Tribunal.

9. In the light of the above observations, the Tribunal has rightly rejected the defence of the Appellant. This Court is of the considered view that there is no infirmity in the Award passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

10. It is represented that the entire award amount has already been deposited. The respondents 1 to 5 are permitted to withdraw the amount lying in the credit of MCOP as per the ratio apportioned by the tribunal along with accrued interest on filing an appropriate application. Consequently, the connected MP.No.1 of 2008 is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

arb/msr

To

1. Motor Accidents Claims Tribunal,
Sub-Court,
Kancheepuram.

2. The Record Clerk,
VR Section,
High Court, Madras.(2 Copies)

+1cc to Mr.S.M.Loganathan, Advocate, S.R.No.61413

+1cc to Mr.S.Jayasankar, Advocate, S.R.No.61200

C.M.A.No.279 of 2008

VSNII (Co)
CS/16/11/2018



WEB COPY