IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

REV.A.NOS.157 & 158 OF 2019

The Executive Officer,
Nagar Palika Parisad,
Etah, Etah District,
Uttar Pradesh.

...Petitioner in both Applications/
5th Respondent

Vs

1.P.Sivagami @ Shantha
W/o.Late Pandidurai

2.P.Deepak Muthukumar
S/o.Late Pandidurai

3.Minor P.Divya Shree
Minor rep. by her mother and natural guardian
P.Sivakami @ Shantha

4.M.Chinathai
W/o.Late Muthumanickam

5.United India Insurance Co. Ltd.,
Motor Third Party Claims Office,
No.38, Anna Salai,
Chennai 600 002

... Respondents in both Applications/
Respondents 1 to 4/Appellants

COMMON PRAYER : Review Applications filed to review the common order dated 11.04.2018 passed by this Court in C.M.A.No.4167 of 2008 and C.M.A.No.1805 of 2017.

C.M.A. Nos. 4167 of 2008 and 1805 of 2017:-

Civil Miscellaneous Appeals filed against the Judgment and Decree in M.C.O.P.No.2429 of 2004, dated 28.08.2007 on the file of the Motor Accidents Claims Tribunal, Chief Court, Court of Small Causes, Chennai.

For Petitioner	:	Mr.S.Arun Kumar (in both applications)
For Respondents	:	Mr.G.Balaji Prasad (for R1 to R4) (in both applications) Mr.E.Rajadurai (for R5) for Mr.N.Vijayaraghvan (in both applications)

COMMON ORDER

(Order of the Court was made by N.KIRUBAKARAN, J)

These petitions have been filed to review the judgment passed by this Court in C.M.A.No.4167 of 2008 preferred by the Insurance Company and C.M.A.No.1805 of 2017 preferred by the Review Petitioner/owner.

2.On 28.01.2004, one Mr.M.Pandithurai, aged about 48 years who was employed as Production Officer in Hindustan Lever Limited, Tea Factory, Etah, Uttar Pradesh, earning about Rs.27,500/- per month was riding his motorcycle from Hindustan Lever Limited, Tea Factory towards his residence at Etah Town, Uttar Pradesh. When he approached the bridge on Kasganj Road, a tractor trailer, belonging to the Executive Officer, Nagar Palika Parisad, (owner), came in a rash and negligent manner and hit against the victim's motorcycle perpendicularly, resulting in falling of the victim on the metal wire that was used to attach the trailer, thereby slitting his throat, consequent to which, he died. Therefore, the claim petition was filed.

3.On contest, the Tribunal held that the driver of the review petitioner was rash and negligent and caused the accident and therefore, awarded compensation of Rs.28,27,415/- against the Review Petitioner as well as Insurance Company. Aggrieved over the award, both the Review Petitioner as well as the Insurance Company preferred appeals before this Court. This Court after hearing the parties, allowed C.M.A.No.4167 of 2008 as there was no insurance coverage on the date of the accident viz., 28.01.2004 and dismissed C.M.A.No.1805 of 2017, enhancing the compensation from Rs.28,27,415/- to Rs.34,00,000/- by way of common judgment dated 11.04.2018. The said common judgment was challenged before the Hon'ble Supreme Court in S.L.P. (C).Nos.18591 to 18592 of 2018 and the same were dismissed by the Hon'ble Supreme Court on 01.08.2018. Thereafter only, the present Review Applications have been filed to review the common judgment passed by this Court on 11.04.2018.

4.Mr.S.Arun Kumar, learned counsel appearing on behalf of the Review Petitioner would submit that this Court should have fastened liability on the Insurance company as the 5th respondent/Insurance Company failed to renew the insurance policy of the vehicle as there was an undertaking at the time of taking insurance policy to renew it periodically by the Insurance Company. He would further submit that the concept of 'deemed insurance coverage' has to be applied to all Government vehicles in the country. Since the vehicle of the Review Petitioner belongs to local body, the same concept of 'deemed insurance coverage' has to be applied to the Review Petitioner's vehicle. Further, it is contended that the criminal court which dealt with the accident case acquitted the driver of the Review Petitioner and therefore, this Court should have absolved the present Petitioner from payment of compensation. The learned counsel further relied upon the judgment of the High Court of Himachal Pradesh in the case of National Insurance Company Limited Vs. Kamal Kishore & others.

5.Heard the parties and perused the records.

6.A perusal of the records would show that all the points now argued before this Court have already been dealt with by this Court elaborately in the common judgment dated 11.04.2018. There should be a ground made out to invoke Order 47 Rule 1 of CPC r/w Section 114 of CPC to review the order. Repeating the very same arguments which have been rejected by this Court by common judgment and confirmed by the Hon'ble Supreme Court cannot be a basis for filing the Review Applications.

7.The applicability of criminal Court judgment/Ex.R2, acquitting the tractor trailer in Cr.C.No.562/04 dated 17.07.2006 was elaborately argued and this Court rightly rejected the said argument holding that the claim case is decided on the touchstone of preponderance of probability, whereas standard of proof beyond reasonable doubt could be applied in criminal cases. The relevant paragraph Nos.15 & 16 are usefully extracted as follows:

> “15.Therefore, Ex.R2, Criminal Court's judgment acquitting the tractor trailer in criminal case No.562 of 2004, dated 17.07.2006 will not have any bearing on Tribunal's proceedings. Further, a close perusal of the criminal Court's judgment would reveal that it is

not an honourable acquittal and only based on benefit of doubt, the tractor trailer driver was acquitted. The relevant paragraphs of the judgment is extracted as follows:

> "After thorough analysis of all evidences present in the document, I came to this conclusion that the charge made by the plaintiff against the accused Chottein under Section 279, 304A, 427 IPC, is not successful doubtlessly. Hence with the benefit of doubt he accuse Chottein is eligible to be freed"

The Honourable Supreme Court in Bimla Devi and others V. Himachal Road Transport Corporation and others reported in 2009 (1) TNMAC 700 (SC) reiterated the claim merely as to establish their case on the touchstone of preponderance of probability and the standard of proof beyond reasonable doubt could not have been applied. Paragraph 15 of the said judgment is extracted as follows:

> "15.In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties"

16.Therefore, the claimants proved the following:
1.The tractor trailer belonging to the appellant in CMA.No.1805/2017 viz., owner was involved in the accident.
2.The tractor trailer was driven rashly and negligently by its driver.
3.Because of rash and negligent driving, the victim was dashed down and died in the accident."

8.With regard to the absence of insurance coverage on the date of accident viz., 28.01.2004, it was already raised by the Review Petitioner before this Court and this Court dealt with the same in paragraphs 30, 31 & 32 of the common judgment holding that there was no valid policy and inspite of direction given by this Court, the Review Petitioner failed to produce the valid insurance policy, which was in force as on the date of the accident as claimed by the Review Petitioner. The relevant paragraph Nos.31, 31 & 32 are usefully extracted as follows:

"30.Therefore this Court draws an adverse inference against the owner of the vehicle. Moreover, the insurance company adduced evidence and categorically stated that on the date of accident, there was no insurance policy and the insurance policy was taken subsequently for the period from 26.04.2004 to 25.04.2005. Ex.R3, insurance policy marked is dated 28.04.2004, which is subsequent to the date of the accident.

31.Further, the Division Bench of this Court, while passing the interim order in this case in M.P.No.1 of 2008 on 28.04.2009, directed the owner and the 5th respondent in CMA.No.4167 of 2008 and the appellant in CMA.No.1805 of 2017 to produce the insurance policy for the vehicle covering the period 26.02.2003 to 25.02.2004. Paragraph 3 of the said order is extracted as follows:

> "Therefore in this stay petition that is filed by the Insurance Company, we restrict the stay in so far as the appellant is concerned and we give a direction to the fifth respondent to produce the Insurance Policy for the insured vehicle covering the period 26.02.2003 to 25.02.2004 on or before 12th June, 2009, failing which they shall deposit a sum of Rs.14,00,000/- (Rupees fourteen lakhs) to the credit of M.C.O.P.No.2429 of 2004 on the file of the Motor Accidents Claims Tribunal, Chief Court, Small Causes, Chennai. If the fifth respondent produces the policy which covers the accident, then we will modify the grant of stay to the appellant appropriately."

32.Even after nine years of passing of the order, so far, the insurance policy for the period from 26.02.2003 to 25.04.2004 has not been filed by the owner of the tractor trailer. The non compliance of the order of this Court would also enable this Court to come to the conclusion that there was no valid insurance policy, available for the tractor trailer as on date of the accident ie., 28.01.2004. Therefore, the liability to pay the compensation is only on the owner of the vehicle. The liability fastened on the insurance company is set aside."

9.The concept of 'deemed insurance coverage' is not available, especially, when there is no insurance coverage as on the date of the accident viz., 28.01.2004. Therefore, the said contention is liable to be rejected. There is no concept of automatic renewal in the absence of insurance premium made by the insured. No insurance company would come forward to renew the insurance policy in the absence of requisite payment of premium. Therefore, the contention raised by the Review Petitioner is absolutely frivolous and is rejected.

10.The enhancement of the award amount is unnecessary and uncalled for, the Revision Petitioner contended. When the trial Court did not apply the right multiplier '13' and applied a wrong multiplier '11' and also erroneously deducted 1/3rd towards personal expenses, especially, when the number of family members are four, this Court applying the right multiplier '13' and deducting 1/4th towards personal expenses instead of 1/3rd as done by the Tribunal awarded just compensation and it is based on the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in (2009) 2 TNMAC 1 (SC). Therefore, the said contention is also liable to be rejected.

11.There is no valid ground raised to review the common judgment, especially, when the Hon'ble Supreme Court already confirmed the common judgment of this Court. Therefore, the Review Petitions are liable to be rejected. Accordingly, rejected.

12.Though the accident occurred as early as 2004, the matter is being prolonged at the instance of the Review Petitioner without taking note of the pathetic position and the fate of the family members of the victim, who died in the accident. This kind of attitude exhibited by the local body, which comes under the definition of State under Article 12 of the Constitution of India is deprecated.

13.With the above observations, these Review Petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

sai

To

The Chief Judge,
Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai – 104.

Rev.A.Nos.157 & 158 of 2019

PA(CO)
RLP(22/09/2021)