IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 23.07.2019
DELIVERED ON : 09.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1625 of 2006

1.Raghavan

2.Chinnaponnu ... Appellants/ Petitioners

Vs

1.Ponnthayammal

2.United India Insurance Company,
Rural Branch,
Thiru Nagar,
Madurai-626 006.

3.R.Padmanaba Reddiar
(Notice to third respondent is
dispensed with).

4.The Branch Manager,
National Insurance Company Ltd.,
54, Nehruji Road,
I Floor, Villupuram,
Villupuram District. ... Respondents/ Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.09.2005 made in MCOP No.1125 of 2000 on the file of the Motor Accidents Claims Tribunal / I Additional Sub-Judge, Cuddalore.

For Appellants : Mr.R.Muralidharan

For Respondents : Mr.D.Bhaskaran for R4
Mr. M.J.Vijayaraghavan for R2

JUDGMENT

The case in brief, is as follows:

On the fateful day, ie. on 03.01.2000, at about 10.30 a.m., the deceased Saravanan, son of the appellants herein, was returning from Madurai after delivering gensets, in a van bearing Reg.No. TN-32-7507, through Trichy. When the van reached near Alanthur Gate in Kunnam Taluk, Perambalur District, the lorry bearing Reg.No. TN-28-X-6606 belonging to the first respondent herein and insured with the second respondent Insurance Company, came from Trichy in a rash and negligent manner and dashed against the van in which the deceased was travelling. Due to the said impact, the deceased sustained grievous injuries. He was admitted in the Government Hospital, Perambalur and he died in the hospital. The appellants / claimants filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,99,000/- with interest at the rate of 9% per annum from the date of petition. Giving a finding that the accident had occurred only due to the rash and negligent driving of the driver of the van and that the deceased travelled in the van unauthorisedly, the Tribunal exonerated both the Insurance Companies from payment of compensation and accordingly directed only the owner of the van, the third respondent herein, to pay compensation to the claimants.

2.Challenging the judgment passed by the Tribunal, the appellants-claimants have filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellants/claimants has submitted that the Tribunal has erred in coming to the conclusion that the deceased was travelling in the van unauthorisedly, in spite of the fact that he was accompanying the goods for delivery and hence his travel cannot be termed as an unauthorised one. It is submitted that the driver of the lorry was not examined and hence no importance can be attributed to Ex.P1-First Information Report, which has been lodged by the driver of the lorry. The Tribunal has also erred in coming to the conclusion that the driver of the van alone drove the van in a rash and negligent manner and caused the accident, since there was head-on collision of both the vehicles and therefore, both the drivers are equally responsible for causing the accident. Stating so, he prayed for a direction to the respondents 1, 2 and 4 to pay the compensation of Rs.2,99,000/- awarded by the Tribunal, jointly and severally. Alternatively, he submitted that the Insurance Companies may be directed to pay the compensation to the claimants and thereafter recover the same from the respective owners of the vehicles. The learned counsel has not questioned the quantum of compensation awarded by the Tribunal.

4.The learned counsel for the fourth respondent Insurance Company has submitted that the Tribunal has correctly considered the materials and evidence available on record and has correctly came to the conclusion that only the driver of the van drove the van in a rash and negligent manner and that the deceased travelled in the van unauthorisedly and accordingly fixed the liability on the van owner to pay the compensation and exonerated the Insurance Companies from payment of compensation. Hence, the judgment of the Tribunal does not require any interference in the hands of this Court, according to the learned counsel.

5.Heard the learned counsel for the appellants and the learned counsel for the fourth respondent and perused the materials and evidence available on record carefully and meticulously.

6.Since the quantum of compensation awarded by the Tribunal is not questioned by the learned counsel for the claimants, the same need not be interfered with by this Court.

7.Before the Tribunal, the father of the deceased was examined as P.W.1. He deposed before the Tribunal that the deceased was returning from Madurai after delivering gensets, in a van bearing Reg.No. TN-32-7507, through Trichy and when the van reached near Alanthur Gate in Kunnam Taluk, Perambalur District, the driver of the van drove it in a rash and negligent manner and dashed against the lorry bearing Reg.No.TN-28-X-6606 which was coming from the opposite direction. Due to the said impact, the driver and cleaner of the lorry and the persons who have travelled in the van, sustained injuries and both the vehicles suffered damages. P.W.2-Chellaperumal has been examined as eye-witness to the occurrence. He travelled in the van along with the deceased at the relevant point of time. He deposed before the Tribunal that when the van reached near Alanthur Gate in Kunnam Taluk, Perambalur District, the driver of the van drove it in a rash and negligent manner and dashed against the right front side of the lorry bearing Reg.No.TN-28-X-6606. It is also stated in Ex.P1-First Information Report, which has been filed by the driver of the lorry, that the van driver drove the van in a rash and negligent manner and caused the accident. Based on these evidences, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the van. But, here it has to be noted that the Tribunal has neither examined the driver of the van nor the driver of the lorry. They are the relevant persons to be examined to speak about the accident. Particularly, the driver of the lorry has to be examined to speak about Ex.P1-First Information Report, since it has been lodged by him. But the same has not been done by the Tribunal. It is seen that the accident had not occurred due to any mechanical defect of the vehicles. It is also seen from the papers that there was head-on collision between the two vehicles. In these circumstances, the Tribunal ought to have fixed the negligence on the part of both the drivers. Therefore, with regard to negligence aspect, this Court comes to the conclusion that the accident had occurred on account of the rash and negligent driving of the drivers of both the vehicles, ie., van and the lorry, and therefore both the drivers are equally responsible for the accident.

8.With regard to the question as to whether the deceased travelled in the van as unauthorised passenger or not, the Tribunal has dealt with the matter in detail. It was put forth on behalf of the insurer of the van that the van is a goods vehicle and the deceased along with five persons have travelled in the van as unauthorised passengers and therefore, the Insurance Company is not liable to pay any compensation to the claimants. Ex.P5 is the copy of the insurance policy pertaining to the van. Ex.P4 is the Registration Certificate pertaining to the van. Ex.P6 is the copy of the insurance policy pertaining to the lorry. On a perusal of Ex.P5, it is apparently clear that the van is a goods vehicle. It is also seen that the deceased travelled in the van along with five others, as is evident from Ex.P1-First Information Report, which is a clear violation of the policy conditions. Thus, it is apparently clear that the deceased travelled in the van as an unauthorised passenger. Even though it has been put forth on behalf of the claimants before the Tribunal that the deceased travelled in the van as a loadman, no documentary evidence has been produced to substantiate the same. In these circumstances, the Tribunal came to the conclusion that the deceased travelled in the van as an unauthorised passenger. Considering the facts and circumstances of the case corroborated with the materials and evidence, the Tribunal rightly came to the conclusion that the deceased travelled in the van as an unauthorised passenger and hence the said finding of the Tribunal does not require any interference by this Court.

9.In view of the above stated circumstances, this Court is of the considered view that directing both the insurance companies to pay the compensation in the ratio of 50:50 and thereafter recover the same from the respective owners of the vehicles, would meet the ends of justice. Accordingly, both the insurance companies, ie., Respondents 2 and 4 are directed to pay the compensation awarded by the Tribunal, ie., Rs.2,99,000/- with interest at the rate of 9% per annum from the date of petition, in the ratio of 50:50 within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the same on making proper application before the Tribunal. Thereafter, the insurance companies shall recover the amounts so deposited, from the respective owners of the vehicles, in the manner known to law.

10.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal /
I Additional Sub Judge, Cuddalore.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.R.Muralidharan , Advocate SR.No. 98775
+1cc to Mr.D.Bhaskaran , Advocate SR.No. 68295
+1cc to Mr.J.Vijayalakshmi , Advocate SR.No. 63933

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A.SK(11/02/2020)