

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3622 of 2008

and

M.P.No.1 of 2008

1. S.Venkatesan
2. M/s.Agsar Paints (P) Ltd.,
28, V.O.C.Nagar, R.S.Puram,
Coimbatore - 641 002. ... Appellants/1&2 Respondents

Vs.

1. Mrs.Rajeswari
2. D.Vijayan
3. Mrs.Sadachiyammal ... Respondents 1 to 3/Respondents
4. New India Assurance Company Ltd.,
28, R.G.Street,
Coimbatore - 641 002. ... Respondent 4/Respondent 3

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to set aside the award dated 03.10.2007 passed in MCOP.No.37 of 2005 on the file of the Motor Accident Claims Tribunal Cum Additional District Judge and Presiding Officer, Special Court for E.C.Act Cases, Coimbatore.

For Appellants : Mr.R.Kannan

For R1 & R2 : Mr.A.S.Vijayaraghavan

For R4 : Mr.N.Vijayaraghavan

R3 - Not Ready in Notice

Judgment

This Civil Miscellaneous Appeal has been filed against the award dated 03.10.2007 passed in MCOP.No.37 of 2005 on the file of the Motor Accident Claims Tribunal Cum Additional

District Judge and Presiding Officer, Special Court for E.C.Act Cases, Coimbatore.

2. The case of the appellants is that on 10.04.2002 at about 3.00 p.m., one Deenadayalan was riding his TVS XL Super bearing Registration No.TN-37-S-4096 followed by his friend who was riding Bajaj bearing Registration No.TN-39-A-0915 from East to West on Marudumalai Main Road, Coimbatore to go to Vadavallai after returning from the office at R.S.Puram, Coimbatore. At that time, a Goods Carrier Auto bearing Registration No.TN-37-Y-5614 which was coming in the opposite direction and driven by the first appellant in a rash and negligent manner, hit against his vehicle. Due to the impact, he fell down and sustained grievous injuries on his right side head, right leg knee and all over the body, and immediately he was taken to Mouthy Hospital, Vadavalli, Coimbatore, for first aid. Thereafter, he was shifted to Sri Ramakrishna Hospital, Coimbatore and was given treatment from 10.04.2002 to 30.04.2002. He underwent two major operation and spent Rs.3,00,000/- towards medical expenses, but in spite of which, he died on 30.04.2002. Since the accident had occurred only due to the negligent driving of the first appellant, the respondents 1 to 3 who are the legal representatives of the deceased have filed a Claim Petition before the Motor Accident Claims Tribunal Cum Additional District Judge, Special Court for E.C.Act Cases, Coimbatore, claiming a sum of Rs.15,00,000/- with interest at 18% per annum from the date of petition till the date of realization as compensation for the deceased.

3. The appellants herein were absent during the trial and therefore they were set exparte before the Court below.

4. The fourth respondent insurance company denying the allegations of the claimants filed a counter affidavit stating that there was absolutely no rashness or negligence on the part of the first appellant in driving the Goods Carrier Auto bearing Registration No.TN-37-Y-5614 and the accident occurred only due to the rash and negligent driving of the deceased who had driven the TVS XL Super bearing Registration No.TN-37-S-4096. The Goods Carrier Auto bearing Registration No.TN-37-Y-5614 is a LMV-3 Wheeler-Goods carrying commercial vehicle and the same has been insured in the name of the second appellant by the R.G. Street Branch Officer between 25.01.2002 and 24.01.2003. The first appellant was not holding a valid badge endorsement at the time of accident to drive the said vehicle, which is in violation of the terms and conditions of the policy and also the provisions of the Motor Vehicles Act.

5. It has been also stated in the counter affidavit that the respondents 1 to 3/claimants have not produced any material to show the age, occupation and monthly income of the

deceased, and have also not produced any documentary evidence to prove the nature of injuries, period of treatment, medical expenses and the cause of death. Further, it has been stated that the claim of interest at the rate of 18% per annum is usurious and untenable in law, and the claimants cannot claim interest over and above the prevailing nationalised bank rate of interest which is only 5% per annum. Moreover, it has been stated that the claimants have not actually sustained any loss of income on the death of Dheenadayalan and the second respondent have been provided with employment by the LIC of India and is getting a decent salary.

6. The Additional District Judge (Motor Accident Claims Tribunal), Coimbatore, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded the compensation for a sum of Rs.5,48,000/- to be paid by the fourth respondent insurance company with interest at the rate of 7.5% per annum from the date of petition till the date of realisation and the same has to be collected from the appellants. Aggrieved by the same, the appellants have filed this appeal before this Court.

7. The learned counsel for the appellants would submit that when the insurance policy covers the date of accident, the Tribunal ought not to have fixed the liability on the appellants. Further, the vehicle which was driven by the first appellant is a light motor vehicle which had a capacity of 900 kgs and he had also a valid driving licence to drive the same. While that being so, the Tribunal ought to not have fixed the liability on the appellants and the same has to be fixed on the fourth respondent insurance company as they are the insurer of the vehicle.

8. In support of his contentions, the learned counsel for the appellants has relied upon the Judgment of the Hon'ble Supreme Court of India, which is reported in (2017) 14 SCC 663 in the case of [Mukund Dewangan Vs. Oriental Insurance Company Limited].

9. Heard the learned counsel for the appellants and the learned counsel for the respondents, and perused the materials available on record.

10. On perusal of the award dated 03.10.2007 passed by the Motor Accident Claims Tribunal Cum Additional District Judge, Coimbatore in MCOP.No.37 of 2005, it is observed that the first respondent was examined as PW1 and has deposed that the first appellant drove the second appellant's Goods Carrier Auto bearing Registration No.TN-37-Y-5614 in a very high speed and negligent manner, and therefore, the accident had occurred on 10.04.2002. In order to disprove her contention, no evidence has been placed by the appellants, and therefore the

Tribunal has come to the conclusion that the accident was caused purely on the rash and negligent driving of the first appellant. Further, it is observed that the fourth respondent insurance company examined one Sivaprakasam as RW1 and marked certain documents i.e. the Insurance Policy of the Goods Vehicle as Ex.R1, a Registered Post sent to the second appellant for production of driving licence of the first appellant as Ex.R2, the acknowledgment as Ex.R3 and the copy of the first appellant's driving licence as Ex.R4. From the documents, the Tribunal has found that the first appellant had obtained the licence only on 24.06.2002 i.e. after two months of the accident occurred on 10.04.2002 to drive the Goods vehicle which is a clear violation of the policy, and therefore, the Tribunal has directed the fourth respondent insurance company to pay the compensation amount to the respondents 1 to 3/claimants and collect the same from the second appellant as he is the person who allowed the first appellant to drive the Goods vehicle when he was not having a valid driving licence.

11. It is also observed from the award passed by the Tribunal that the first respondent who examined as PW1 has further deposed that her husband i.e. the deceased, was a retired Military driver aged about 51 years at the time of accident and he was working as Sub-staff in LIC and was getting a salary of Rs.5244/- per month. To substantiate her contention, she examined one Jainulabudeen who is a staff of LIC to mark the Salary Certificate of the deceased which was marked as Ex.P16. Further, it is observed that though the first respondent/claimant has stated that there are future prospects for the deceased, she has not established the same by way of any documentary evidence. But, if the deceased was alive, definitely he would have get his yearly increment and dearness allowance, and therefore, the Tribunal considering the same has fixed the income of the deceased as Rs.4,000/- per month which comes around Rs.48,000/- per year and awarded a sum of Rs.5,28,000/- to the respondents 1 to 3/claimants towards loss of income per year after applying the multiplier. Moreover, it is observed that the Tribunal has awarded Rs.5,000/- each for Transportation and Funeral Expenses, and Rs.10,000/- for Loss of Consortium, which are found to be very reasonable sum. However, the Tribunal has fixed the entire liability on the appellants, and therefore, the appellants have come before this Court by filing this appeal.

12. It would be pertinent to point out the Judgement referred by the learned counsel for the appellants as it has been held in paragraph 17 of the Judgment as follows:

"17. The definition of "light motor vehicle" makes it clear that for a transport vehicle or

omnibus, the gross vehicle weight of either of which or a motor car or tractor or roadroller the unladen weight of any of which, does not exceed 7500 kg. "Gross vehicle weight" has been defined in Section 2(15). The motor car or tractor or roadroller, the unladen weight of any of which does not exceed 7500 kg as defined in Section 2(48) of the Act, are also the light motor vehicle. No change has been made by Amendment Act 54 of 1994 in the provisions contained in Sections 2(21) and 10(2)(d) relating to the light motor vehicle. The definition of "light motor vehicle" has to be given full effect to and it has to be read with Section 10(2)(d) which makes it abundantly clear that "light motor vehicle" is also a "transport vehicle", the gross vehicle weight or unladen weight of which does not exceed 7500 kg as specified in the provision. Thus, a driver is issued a licence as per the class of vehicle i.e. light motor vehicle, transport vehicle or omnibus or another vehicle of other categories as per gross vehicle weight or unladen weight as specified in Section 2(21) of the Act. The provision of Section 3 of the Act requires that a person in order to drive a "transport vehicle" must have authorisation. Once a license is issued to drive light motor vehicle, it would also mean specific authorisation to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, roadroller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg....."

13. In view of the above Judgment, it is clear that if the gross weight of the transport vehicle does not exceed 7500 kg, which is called "light motor vehicle" and once a license is issued to a person to drive the motor vehicle, he can also drive the "light motor vehicle" and he does not need any badge endorsement to drive the same. In this case, the first appellant had driven a Goods Carrier Auto which had a capacity of 900 kgs and it is a light motor vehicle and therefore, he does not need any badge endorsement and only the driving licence is enough to drive the same, which he had at the time of accident and the same has been produced before this Court. The Additional District Judge (Motor Accident Claims Tribunal), Coimbatore, without considering the above facts, has erroneously fixed the entire liability on the second appellant and hence this Court is inclined to modify the same. As far as the quantum of compensation is concerned, this Court does not find any error and therefore, this Court confirms the same.

14. Accordingly, the fourth respondent insurance company is directed to deposit the entire award amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization as fixed by the Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. In case, if any amount has already been deposited by the fourth respondent insurance company, they can deposit only the remaining amount within the aforesaid period. After the entire amount has been deposited by the fourth respondent insurance company, the respondents 1 to 3/claimants can withdraw the same by filing a formal petition before the concerned Court. In case, if the appellants have deposited any amount as per the award dated 03.10.2007 passed by the Court below, they can withdraw the same from the Court below.

15. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//
Sub Assistant Registrar

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To

1.The Additional District Judge
(Motor Accident Claims Tribunal),
Special Court for E.C.Act Cases, Coimbatore.

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

+lcc to Mr.R.Kannan, Advocate SR.100636
+lcc to Mr.N.Vijayaraghavan, Advocate SR.100805

C.M.A.No.3622 of 2008
and
M.P.No.1 of 2008

BS(CO)
CB(18/09/2020)