

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2784 of 2009

and

M.P.No.1 of 2009

The Divisional Manager,
The New India Assurance Company Limited,
Vellore. .. Appellant/2nd Respondent

Vs.

1.Gowri

2.Minor. Lakshmi

3.Minor. Sarasu

4.Minor. Siva

5.Kanniammal ... 1 to 5 Respondents//Petitioners

6.R.Kannan ... 6th Respondent/1st Respondent

(Minor respondents 2 to 4 are represented by mother and next friend Gowri)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 15.04.2009 passed in M.C.O.P.No.167 of 2003 on the file of the Motor Accident Claims Tribunal / Sub Court, Cheyyar.

For Appellant : Mr.C.Ramesh Babu
For RR 1 to 5 : Mr.K.G.Senthil Kumar
For R6 : No appearance

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J U D G M E N T

The appellant / New India Assurance Company is the second respondent in M.C.O.P.No.167 of 2003 on the file of the Motor Accident Claims Tribunal / Sub Court, Cheyyar. The respondents 1 to 5 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.20,00,000/- for the death of one Perumal, husband of the first claimant, father of the claimants 2 to 4 and son of the claimant 5 in a road accident on 07.02.2003.

2. The case of the claimants is that on 07.02.2003, Perumal (deceased) was travelling as a cleaner in a lorry bearing Registration No. TN 31 C 8914 on Cheyyar - Arni road and at about 03.45 P.M., the driver of the lorry drove the lorry rashly and negligently, as a result of which, the lorry toppled and the deceased sustained fatal injuries and died on the way to hospital. According to the claimants, the rash and negligent driving of the driver of the lorry belonging to the sixth respondent was the cause of the accident and that since the said lorry was insured with the appellant / New India Assurance Company, the owner and the insurer of the lorry are jointly and severally liable to pay compensation.

3. The learned Subordinate Judge / Motor Accident Claims Tribunal, Cheyyar after analysing the evidence on record, awarded a compensation of Rs.5,29,000/- together with interest at the rate of 7.5% per annum to the claimants. He further concluded that the liability of the New India Assurance Company and the owner of the lorry is joint and several. Questioning their liability to pay the compensation, the appellant / New India Assurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.C.Ramesh Babu, learned counsel appearing for the appellant / New India Assurance Company contended that though no evidence was adduced by the claimants to prove the occupation of the deceased, the Tribunal held that the deceased was a cleaner in the lorry, on the date of the accident. His further contention is that even assuming that the deceased was a cleaner in the lorry, he can claim compensation only under the provisions of the Workmen Compensation Act, 1923. He therefore, prayed for setting aside the orders passed by the Tribunal.

5. Per contra, Mr.K.G.Senthil Kumar, learned counsel appearing for the respondents 1 to 5 / claimants contended that the Tribunal after considering all the oral and documentary evidence adduced on both sides, concluded that the deceased was a cleaner in the lorry. He therefore prayed for dismissal of the appeal.

6. No appearance on behalf of the sixth respondent.

7. In the instant case, the wife of the deceased had deposed before the Tribunal that her husband travelled as a cleaner in the lorry on 07.02.2003. The owner of the lorry (sixth respondent) in his counter, has not specifically stated that the deceased was not a cleaner in his lorry. Moreover, no contra evidence was adduced on the side of the appellant / New India Assurance Company to substantiate their contention that the deceased was not a cleaner in the lorry, on the date of the accident and therefore the Tribunal was right in concluding that the deceased travelled as a cleaner in the

lorry belonging to the sixth respondent on 07.02.2003.

8. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection / appeal was filed by the respondents 1 to 5 / claimants. A perusal of the award also shows that it is not on the higher side and the same is upheld.

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

(ii) The orders passed by the Tribunal is upheld.

Sd/-

Assistant Registrar (CS-III MDU)

//True Copy//

Sub Assistant Registrar

Krk

To

The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Cheyyar.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.K.G.Senthilkumar, Advocate, S.R.No. 95986

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CP(CO)
GN(29/07/2020)