

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1582 of 2011

1.Mageswari
2.Minor Durai
3.Minor Easwari
4.Minor Ramya
5.Maniammal
6.Mariappan
7.Mangammal ...Appellant/Claimants
(Minor petitioners 2 to 4 are
all children of Late Chinnamuthu
and their next friend mother
1st petitioner)

Vs.

1.Mahalingappa
2.Oriental Insurance Co. Ltd.,
Rep. by its Manager,
Divisional Office, No. VII,
No.1, Shankar House,
3rd floor, Ram extension,
Mekhri Circle, Bangalore,
Karnataka State. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 08.12.2009, in M.C.O.P.No. 849 of 2008, on the file of the Motor Accidents Claims Tribunal - cum - Principal District Court, Dharmapuri.

For Appellant : Mr.M.Selvam

For Respondents : Mr.S.Manohar for R2
R1 - Not ready in notice

JUDGMENT

The appellants are the claimants in M.C.O.P.No. 849 of 2008, on the file of the Motor Accidents Claims Tribunal, Principal

District Court, Dharmapuri. They have filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/-, for the death of one Chinnamuthu, in a road accident that took place on 20.04.2008.

2. The case of the appellants/claimants is as follows:

(i) The first claimant is the wife of the deceased, the second, the third and the fourth claimants are the Children of the deceased, the fifth and the sixth claimants are the parents of the deceased and the seventh claimant is the sister of the deceased.

(ii) The deceased was aged about 37 years, at the time of the accident. He was doing scrap business at Bangalore, earning a sum not less than Rs.10,000/- per month.

(iii) Brief facts: On 20.04.2008, the deceased Chinnamuthu travelled as the owner of the goods, namely, his house hold articles like cots, wooden furnitures, vessels and etc., in lorry bearing Registration No. KA 05 B 2617, proceeding from Palacode to Vellichandai main road. The said lorry belongs to the first respondent and it is insured with the second respondent. At about 03.00 hours, while the lorry was proceeding in front of the sugar mill, the driver of the lorry drove the vehicle in a rash and negligent manner and lost his control and dashed against the road side Tamarind tree. Due to the impact of the said accident, the deceased and others who travelled in the said lorry sustained grievous injuries.

(iv) Immediately, the deceased was taken to Government Hospital, Dharmapuri and after first aid he was referred to Salem Hospital. The deceased died on the way to Salem Hospital. Thereafter, he was brought back to the Government Hospital, Dharmapuri and the duty Doctors of Government Hospital, Dharmapuri conducted the post mortem of the deceased.

(v) The Palacode police has also registered the case against the drive of the said lorry in Cr. No. 466 of 2008, under Section 279, 337, 338 and 304 (A) of IPC. According to the appellants/claimants, the accident occurred only due to the rash and negligent driving of the driver of the said lorry, and that, since, the said lorry was insured with the second respondent/Insurance Company, both the owner of the lorry bearing Registration No. KA 05 B 2617 and its insurer are liable to pay compensation of Rs.15,00,000/- to them.

3. The owner of the said lorry remained absent before the Tribunal, and therefore, he was set ex-parte. The second respondent/ Insurance Company filed a counter statement stating that, the deceased Chinnamuthu travelled as a gratuitous

passenger in the lorry, and as such, it is a violation of the terms and conditions of the policy, and hence the Insurance company have to be exonerated from its liability to pay compensation to the appellants/claimants. They have also disputed the age, income and occupation of the deceased.

4. Before the Tribunal, on the side of the appellants/claimants, the wife of the deceased, PW1 and an eye witness to the occurrence PW2 were examined and exhibits P1 to P7 were marked. On behalf of the Insurance company, RW1 and RW2 were examined and Registration Certificate of the lorry bearing Registration No. KA 05 B 2617 (Ex.R1) was also marked. The Tribunal after taking note of the fact that, one Madhu (PW2), was examined as an eye witness to the occurrence of the accident, coupled with the FIR copy (Ex.P1), Post mortem certificate (Ex.P2), ambulance bill (Ex.P5) and driving licence of Shanmugam (Ex.P7), held that the accident has taken place only due to the rash and negligent driving of the driver of the said lorry and accordingly, came to a conclusion that the claimants who are the legal representatives of the deceased are eligible to get compensation.

5. During the trial, the Insurance Company contended that the deceased travelled in the said lorry as a gratuitous passenger. They also contended that possession of badge in the driving licence is necessary, in order to, drive the vehicles weighing more than 7,500 kg, and since, at the time of the accident, the driver of the said lorry does not own necessary badge in driving licence, they should be exonerated from their liability to pay compensation to the appellants/claimants. After going through the oral and documentary evidence placed before the Court, the Tribunal held that necessary badge endorsement in driving licence is necessary for driving the said lorry and the driver did not possess the same. In addition to that, the Tribunal held that the deceased travelled in the said lorry only as gratuitous passenger and therefore, concluded that the Insurance Company is not liable to pay compensation amount to the appellants/claimants. As a result, the Tribunal awarded a compensation of Rs.6,16,000/- together with interest at the rate of 7.5% per annum and directed the first respondent, the owner of the lorry bearing Registration No. KA 05 B 2617, to pay the compensation to the claimants. Aggrieved against the said orders passed by the Tribunal, the claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard both sides and perused the materials available on record.

7. On going through the orders passed by the Tribunal, it could be seen that, the Tribunal has categorically given a

finding that the deceased along with his family members have been travelling in the said lorry to perform religious vow along with the goods from Bangalore to Irumathur village and also it has also held that the deceased Chinnamuthu travelled as the owner of the goods. In view of this specific finding of the Tribunal that, the deceased has travelled along with the goods as the owner of the same, he cannot be treated as a gratuitous passenger and accordingly, the finding given by the Tribunal, in this regard, is vacated. Therefore, the deceased travelled in the said lorry as the owner of the goods.

8. After perusing the Registration Certificate of the said lorry (Ex.R1), it could be seen that, the alleged weight of the said lorry is 8,770 kg. In the Judgment pronounced by the Apex Court in the case of Mukund Dewangan vs. Oriental Insurance Company Limited reported in 2017 (2) TN MAC 145 (SC), it has been held that once a licence is issued to drive 'Light Motor Vehicle', it would also mean specific authorization to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. In the present case, since the said lorry is weighing more than 7500 kg, the badge endorsement in driving licence is compulsory.

9. A perusal of the driving licence of Shanmugam (Ex.P6), shows that the necessary badge endorsement is found and therefore, this Court holds that Shanmugam who was the driver of the said lorry, at the time of the accident, was having necessary badge endorsement. In view of the factual matrices of the Insurance Policy (Ex.P3), Driving licence of Shanmugam (Ex.P6) and Registration Certificate (Ex.R1), I hold that the finding rendered by the Tribunal exonerating the Insurance Company from its liability is set aside. Accordingly, this Court holds that the driver of the lorry is having valid and effective driving licence, at the time of the accident, and he was also having necessary badge endorsement as could be seen from the driving licence (Ex.P6). In view of the Insurance Policy (Ex.P3), since the deceased travelled as the owner of the goods, the Insurance Company is held liable to pay compensation to the appellants/claimants. Therefore, the finding of the Tribunal that the Insurance Company is not liable to pay compensation to the appellants/claimants is hereby vacated and the Insurance Company and the owner of the lorry bearing Registration No. KA 05 B 2617 are jointly and severally liable to pay the compensation to the appellants/claimants.

10. Quantum of compensation: The Tribunal based upon the post mortem certificate (Ex.P2), fixed the age of the deceased as 37 years. In the absence of any evidence to prove the income of the deceased, the Tribunal fixed the same as Rs.4,000/- per

month, since the deceased is said to have been worked as coolie in Bangalore city. The Tribunal deducted 1/4th towards the personal expenses of the deceased and also adopted correct multiplier of 16 and awarded a sum of Rs.5,76,000/- to the appellants/claimants, which is hereby confirmed.

11. The claimants have produced ambulance bill (Ex.P5) which shows that they have incurred an expense to the tune of Rs.40,000/-. However, the Tribunal in the absence of signature on the receipt and also taking note of the fact that Registration number of the ambulance was not mentioned in the said receipt, denied the bill the claimants have produced. Anyhow, awarded a sum of Rs.5,000/- towards 'ambulance bill' since immediately after the accident, the deceased was taken to the Dharmapuri Government Hospital and thereafter taken to the Salem Government Hospital by way of ambulance and the same is also hereby confirmed. This court is of the opinion that the award passed by the Tribunal under other heads are also just and reasonable and therefore, the same are hereby confirmed.

12. In respect of the seventh appellant, she is the sister of the deceased Chinnamuthu. She got married and living in her husband house. Therefore, the Tribunal held that she is not entitled to any claim in this case and the same is hereby confirmed. Only the appellants 1 to 6 are entitled to get compensation.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is confirmed.

(iii) The order directing the owner of the lorry bearing Registration No. KA 05 B 2617 to pay compensation to the claimants is hereby set aside.

(iv) The second respondent - Oriental Insurance Company Limited is directed to deposit the entire compensation of Rs.6,16,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 849 of 2008, dated 08.12.2009, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Dharmapuri within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellants 1, 5 and 6 are permitted to withdraw their share of compensation amount, in

the suitable manner known to law. The apportionment granted by the Tribunal shall be kept intact.

(vi) The appellants 2, 3 and 4 are minor, and therefore, their share of compensation amount is ordered to be deposited in any one of the nationalized bank until they attain majority and the first appellant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Principal District Court,
Dharmapuri.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.M.Selvam, Advocate, Sr.No. 20449

+1 cc to Mr.S.Manohar, Advocate, Sr.No. 20426

C.M.A.No.1582 of 2011

VBA (CO)
CSL/24.07.2019

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