IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on :18.02.2019]

[Pronounced on : 10.04.2019]

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 1729 of 2011
and
M.P.No. 1 of 2011

Divisional Manager,
National Insurance Co. Ltd.,
Pondicherry. ... Appellant/2nd Respondent

Vs.

1. Valliammal

2. Minor. Kumaravel

3. Minor.Kumarasamy

4. Minor. Vijayakumar ...Respondents/Petitioners

5. Smt. Faritha Begum ...Respondent 5/Ist Respondent

Prayer: This petition is filed U/s 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 22.12.2009 made in M.C.O.P.No.177 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Villupuram.

For Appellant : Mr.S. Arun Kumar

For R1 to R4 : Mr. M.Rajaram

For R5 :unserved

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the Judgment and decree dated 22.12.2009 made in M.C.O.P.No.177 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Villupuram.

2. The facts which are necessary to decide this appeal is also follows:

On 11.03.2002 when the deceased/Elumalai was standing in front of a petty shop at Mela-Kondur near Periyayaa Ammankoil a tractor bearing Registration No.TN-32-4489 and Trailor TDF with sugar cane, came in the opposite direction in a rash and negligent manner and the driver without sounding horn and the sugar cane loaded in the Trailor came into contact with the high tension live electricity wire. On coming into know about this, the driver of the said vehicle jumped from the Tractor. Due to the negligence and rash act of the driver the vehicle dashed against the deceased. Hence, the legal representatives of the deceased filed a claim petition before the Motor Claims Tribunal in M.C.O.P.No.177 of 2004 seeking a compensation for Rs.10,00,000/-.

3. The Insurance company resisted their claim by way of filing a counter statement stating that the deceased Elumalai was travelling in a Tractor bearing Reg.No.TN-32-4489 as an unauthorized passenger and the Tractor is a vehicle used for irrigation purpose and no person is permitted to travel in the vehicle. Hence, it is violation of the terms and conditions of policy, by allowing an person to travel in his vehicle. Hence, they are not liable to pay any amount as compensation to the appellant.

4. It is also seen from records that in the trial, on behalf of the claimants 2 witnesses and documents Ex.P1 to P.5 were marked. On the side of the respondents, one witness and documents Ex.P1 to P.3 were examined.

5. The Tribunal after considering the oral and documentary evidence had come to the conclusion that the deceased died due to the electrocution and the Insurer and owner of the vehicle are jointly and severally liable to pay the award amount. Hence, the appeal has been preferred by the Insurance company.

6. The learned counsel for the Appellant/Insurance company could contend that the Tribunal based on the version of PW-2/ and Exp.P1.F.I.R and the postmortem report concluded and fixed the liability on the part of Insurance Company. The Tribunal committed an error by relying upon the unbelievable evidences adduced by the respondents. He further contend that they have filed this appeal for challenging the liability and not disputing the negligence aspect. Hence, prays to allow this appeal.

7. The learned counsel for the respondents contend that the award passed by the Tribunal is a reasonable one for a person

who died in the accident and further contend that they have lost one of the family member who is the sole bread winner of the family. Hence, prays to dismiss this appeal.

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

9. As already stated above it is crystal clear that the accident has occurred due to the negligence on the part of the driver that he failed to drive carefully and the sugar cane loaded in the Trailor came contact with the high tension live electricity wire and knowing this the driver of the said vehicle jumped from the Tractor.

10.However, it appears from the claim petition as well as in his evidence of PW1 in the witnesses box that the deceased / Elumalai was died due to accidental injuries sustained by him when the vehicle dashed against him but not due to the electrocution.

11.Before adverting further, it will be appropriate to rely upon the Judgment of a Division Bench of this Court comprising K.K.Sasidharan.J. and R.Subramanian.J. in C.M.A.Nos.1529 to 1533 of 2015, dated 24.10.2018 [Bharati AXA General Insurance Company Limited Vs.Anandi and others], wherein it is stated the Insurance Company cannot be made liable and the Insurance company is exonerated from paying the compensation and the they shall recover the amount already deposited by them, from the Tribunal, as the deceased travelled as an unauthorized passenger in the said vehicle. The Insurance Company is exonerated from paying the compensation.

12. After perusing the oral evidence of P.W.1 and taking note of the cause of the death as noted under Ex.P.3-Post Mortem report, it appears that Elumalai died due to electrocution and a similar finding is also recorded by the Tribunal. With regard to the manner of the accident and the place where the deceased was standing in the road (as stated by P.W.2) or the deceased was travelling on the top of the sugarcane in the Trailer(as projected by the insurance company) is the crux of the issue that has to be determined.

13. It is seen that R.W.1, Assistant from the insurance company deposed that as per the investigation report-Ex.R.1, the manner of the accident has been clearly narrated. Based upon the charge sheet filed by the Arakandanallur police station, the deceased was travelling on the top of the sugarcane and he came in contact with the live high tension wire passing over the road.

14. In this connection on witness summons R.W.2-Selvaraj, Sub-Inspector of police, who laid the charge sheet in the criminal case deposed that the deceased Elumalai was siting on the top of the sugarcane only and due to the fact that he came in contact with the live high tension wire passing over the road, he died in the accident and the police have also filed charge sheet accordingly assumes significance.

15. It remains to be stated that with regard to the manner of the accident, in cross-examination, P.W.2 alleged occurrence witness, was not interested to answer the question put to him on behalf of the insurance company, as to the manner of death also assumes significance and hence, in view of the oral and documentary evidence available on record and taking into consideration the evidence of R.W.1 and R.W.2 coupled with the documentary evidence of Ex.R.1 which contains the charge sheet and also Ex.P.3-post mortem certificate, this Court comes to the conclusion that the version adduced by P.W.2 is totally unreliable and found to be artificial.

16. Yet another point is that the Tribunal, while rendering a finding with regard to the manner of the accident, has come out with a new theory that the deceased Elumalai was standing near the trailer when the sugarcane which was being loaded came in contact with the high tension wire running over the road and due to electrocution, the electricity passed through the lorry and thereafter, in turn affected Elumalai thereby the said Elumalai died due to electrocution. This Court is unable to accept such a extrapolated interpretation given by the Tribunal in the absence of any evidence to that effect. Accordingly, the finding of the Tribunal that the deceased Elumalai was standing in the street stands hereby vacated and further held that he had travelled only on the top of the sugarcane loaded in the trailer.

17. For the reasonings in the proceeding paragraphs, it is held that, the deceased Elumalai has travelled as unauthorized passenger on the roof top of the sugarcane and taking into consideration the nature of the policy viz., 'act policy' and he is not being the employee of the owner of the goods and following the decision in Anandi's case, cited supra, this Court holds that in view of the above, factual finding and also the legal position as enumerated in the preceding paragraphs, the order passed by the Tribunal holding that the insurance company is also liable hereby stands vacated and this Civil Miscellaneous Appeal is allowed.

18.In the result, this Court is inclined to pass the following order:

a) this Civil Miscellaneous appeal is allowed and the Insurance Company is exonerated from the liability fixed by the Tribunal and permitted to withdraw the amount if any already paid/ deposited in the Court.

(b) the owner of the vehicle is directed to deposit the award amount with 7.5% interest within a period of 8 weeks from the date of receipt of copy of this Judgment.

(c) On such deposit the first respondent is permitted to withdraw the amount, by way of filing proper application before the Tribunal. The amount apportioned as compensation to the minors second, third and fourth respondent are directed to be deposited in a Nationalised Bank till they attain majority, however, the mother/first claimant is permitted to withdraw accrued interest once in three months.

(d) No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal
Chief Judicial Magistrate, Villupuram.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.S.Arunkumar, Advocate Sr.35416

CMA No.1729 of 2011
and
M.P.No.1 of 2011

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