

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 24.04.2019

Judgment Delivered on : 07.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1217 of 2012

and

MP.No.1 of 2012

The National Insurance Company Ltd.,
Represented by its Divisional Office - I,
Salem. Appellant/2nd Respondent

Vs.

1.Palaniappan
2.Minor Devaraj
3.Minor Ananthi
4.Perumayee
5.Venkatachalam
6.M.Sivamalai Respondents/Petitioners 1 to 5
and 1st Respondent

Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.11.2011 made in M.A.C.T.O.P.No.783 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge and Special Judge for EC Act Cases, Salem.

For Appellant : Mrs. N.B.Surekha
For Respondents : M/s. R.Shase
for M.Guruprasad (for R1 to R5)
: No Appearance - R6

JUDGMENT

This appeal has been filed by the Insurance Company, challenging the findings rendered by the Motor Accidents Claims Tribunal, Additional District Judge and Special Judge for EC Act Cases, Salem in and by award dated 28.11.2011 in M.A.C.T.O.P.No.783 of 2008, in fixing the liability on the part of the Insurance Company to pay the compensation amount to the claimant.

2.The first respondent herein is the claimant, who is the husband of the deceased one Sarsu, the second and the third claimants are offspring of the deceased and the fourth and fifth claimants are parents of the deceased, before the Tribunal.

3.The gist of the case is that on 11.11.2007 at about 6.30 pm, when the first claimant was riding his vehicle - TVS 50 bearing Registration No.TN-33-AX-6085 along with wife Sarasu (deceased), as a pillion rider from Tiruchengode to Pallipalayam main road. At that time, a Bus bearing Registration No.TN-34-E-8251 (HTV-Bus), was driven by its driver in a rash and negligent manner from the same direction and hit behind the claimant's two wheeler. Due to the said impact, the wheel of the Bus ran over the hip of the pillion rider/Sarasu and she died on the spot itself. According to the claimant, the rash and negligent manner of driving of the driver of the Bus had caused the accident and a case was registered against him under Sections 279 and 304A-IPC in Cr.No.921 of 2007. At the time of accident, the deceased worked in Lime stone factory and earned a sum of Rs.6,000/- per month and she was aged 24 years. Hence, the claimant filed the claim petition, claiming a sum of Rs.7 lakhs as compensation.

4.The first respondent before the Tribunal was called absent and remained ex-parte.

5.The claim made by the claimant was opposed by the Insurance Company by denying the age, avocation and income of the deceased. As per the trip sheet, the said Bus was standing at Erode bus stand at 6.35 pm. But the accident had allegedly taken place at 6.30 pm, without tracing the Bus number the first claimant has lodged the complaint as if the above said vehicle was involved in the said accident. Hence, the Insurance company is not liable to pay compensation to the claimants.

6.In order to substantiate the claim, before the Tribunal, on the side of the claimants, the first claimant examined himself as P.W.1 and one Ponnusamy, occurrence witness was examined as PW.2 and six documents were marked as Exs.P1 to P6. On the respondents side, one Sivamalai/the owner of the offending vehicle was examined as RW.1 and one Selvaraj/the Assistant Manager of the Insurance Company was examined as RW.2 and five documents were marked as Exs.R1 to R5.

7.After analysing the entire evidence, the Tribunal has awarded a sum of Rs.6,53,000/- as compensation to the claimants and directed the respondents to pay the compensation jointly and severally. Aggrieved over the same, the present appeal has been preferred by the Insurance Company on the ground that the Bus

which was insured with them has not at all involved in the accident and as per Ex.P1/FIR, the vehicle number was not furnished and there is a change of bus permit number as well.

8.The learned counsel for the appellant/Insurance company has also submitted that in the first information report, the husband of the deceased mentioned the Bus as a mofussil bus and he has not specifically stated about the Registration number of the Bus. After investigation, the Police has incorporated the Registration number in the charge sheet. Hence, the case is falsely implicated by the first claimant and the Insurance company cannot be mulcted with the liability.

9.Heard the submissions made on either side and perused the materials available on record.

10.After hearing both sides and perusing the records, it is seen that the core point that is to be determined is whether the involvement of the vehicle, which was insured with the Insurance company, has been proved in a manner known to law by the claimant.

11.Before the Tribunal, the second respondent filed a counter statement alleging that the Bus will be at Erode bus stop at 6.30 pm, but, the time of accident is said to be at 6.30 pm, therefore, the dispute is involvement of the bus in the accident.

12.As per Ex.P1/FIR, Ex.P2/Post-mortem Certificate, the involvement of the Bus is mentioned, but the number of the Bus was not mentioned in the Ex.P1/FIR and as per Exs.P3 & P4/MVI report of the vehicle, the vehicle number was mentioned. After the investigation of Ex.P1/FIR, the police filed the charge sheet under Ex.P5, in due course, the case was registered as against the driver of the Bus.

13.It was stated by RW.1/the owner of the vehicle that his bus was not at all involved in the said accident. At this juncture it remains to be stated that RW.1 has not filed any counter statement before the Tribunal and entered into the witness box and deposed that as against the filing of the charge sheet against the driver of the Bus and they preferred CBCID investigation on the complaint and the fate of the complaint is not yet been known.

14.To substantiate the version of RW.1, Exs.R1 and R2 were filed, it remains to be stated that even as per Ex.R1/replacement of vehicle order it was stated that the

vehicle having Registration No.TN-34-C-5592 was replaced by another vehicle TN-34-E-8251 w.e.f 01.03.2007. The date of the accident is on 11.11.2007. Hence, it was clearly proved through Ex.R1 that the vehicle involved in the said accident is TN-34-E-8251. Further, Ex.R2/a copy of Revision of timings of bus issued by RTO indicates with regard to the revision of times pertaining to the vehicle No.TN-34-E-8251 but was not furnished by the respondents and Ex.R2 is with respect to the vehicle No.TN-34-C-5592. Hence, the evidence of Ex.R2 is not belonging to the involvement of timing of the vehicle mentioned in the claim petition. PW.2, relied Exs.P1, P3, P4 and P5 and based on the evidence, the Tribunal has come to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the Bus bearing Registration No.TN-34-E-8251 and the first respondent before the Tribunal is the owner and the second respondent is the insurer of the Bus are jointly and severally liable to compensate the claimants.

15.Accordingly, this Court finds that even as per evidence of RW.1 the respondents have not substantiated their version by filing the trip sheet. Though the second respondent/Insurance company has stated that the vehicle did not ply on the road, they did not file any trip sheet for that day. Furthermore, when the owner of the vehicle has deposed that his vehicle is not involved, it is for him to prove the plea to the degree of preponderance of probability. Though the plea has been raised by the owner of the vehicle/RW.1, he has not filed any counter statement and it also assumes significances.

16.It is seen from the deposition of PW.1/first claimant that in view of the accident caused to his wife, she died on the spot itself. Since, he was busy in shifting his wife to the Hospital, he could not file the FIR on the same day of occurrence. The mere delay of filing of the FIR cannot be made as a ground to doubt the entire episode. It remains to be stated that the driver of the Bus is the best evident to speak about the plea raised by the respondents regarding the non-involvement of vehicle and for the reason best known to the respondents or driver of the vehicle was not examined. Any bystander or independent witness near the scene of crime is competent to depose about the manner of the accident inter-alia the involvement of the vehicle in the accident. In this regard, it remains to be stated that PW.2 is the independent occurrence witness, who has clearly deposed about the involvement of the vehicle in the accident and there is nothing contrary in the cross examination to discredit his evidence.

17.Hence, this Court finds that in view of the evidence of PW.2/independent witness, who deposed regarding the involvement of vehicle and in the absence of non-examination of driver of the vehicle, or non-examination of time keeper, the involvement of the vehicle was proved in the manner known to law. Thus, the contention raised by the Insurance company stands negatived as devoid on merits. Further, there is no independent witness examined to depose regarding the non-involvement of the vehicle as projected by the owner of the vehicle and the Insurance company. Accordingly, I hold that the vehicle having Registration No.TN-34-E-8251 is involved in the said accident and the finding arrived at by the Tribunal by giving different reasoning, is hereby confirmed and the involvement of the vehicle is proved in the manner known to law.

18.As regards compensation awarded on different heads by the Court below it appears to be reasonable and the same is hereby confirmed. Hence, the Civil Miscellaneous Appeal filed by the Insurance company is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Additional District Judge and Special Judge
for E.C. Act Cases, Salem.

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

+1 cc to M/s.N.B.Surekha, Advocate Sr.No. 68001

+1 cc to M/s.M.Guruprasad, Advocate Sr.No. 68574

AKM/29.01.2020/5P-5C /

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