IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.03.2019

Pronounced on : 22.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1312 of 2012
and
MP.No.1 of 2012

The New India Assurance Co.Ltd.,
Rep.by its Divisional Manager,
Vellore. ... Appellant /2nd Respondent

Versus

1.Santhi
2.Minor Priyadarshini
3.Minor Prabhu
4.V.N.Rajendiran
... Respondents/Petitioners and 1st Respondent

Minors rep by their Mother and natural
guardian and Mother Santhi

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.01.2006 passed in MCOP.No.114 of 2002 on the file of the Motor Accidents Claims Tribunal(Subordinate Judge), Gudiyatham, Vellore District.

For Appellant : Mr.K.Padmanabhan

For Respondents: Mr.G.Vinodhkumar (for R1 to R3)

: No Appearance - R4

JUDGMENT

The appellant herein/Insurance Company has filed this appeal challenging its liability in payment of compensation.

2. Respondents 1 to 3 herein are the legal heirs of the deceased Vijayakumar. The first respondent is the wife of the

deceased, second respondent is the son of the deceased and the third respondent is the daughter of the deceased Vijayakumar. They have filed a claim petition in M.C.O.P.No.114 of 2002 before the Motor Accidents Claims Tribunal (Subordinate Judge), Gudiyatham, Vellore District.

3.It is the case of the claimants that on 16.01.2001, at 1.30 p.m., the deceased Vijayakumar was travelling in the Van bearing Registration No.TN-23-D-1530 as a Cleaner and when the Van reached near Keilmuttukur Village, Van driver drove the same in a rash and negligent manner and the van capsized. The accident was due to the rash and negligent driving of the driver of the van. First respondent before the Tribunal is the owner of the van and the second respondent before the Tribunal is the insurer of the van. It was alleged that the respondents before the Tribunal are jointly and severally liable to pay compensation to the claimants.

4.The fourth respondent herein, who is the owner of the van which met with an accident, has filed a counter statement stating that the deceased Vijayakumar travelled in the vehicle as a cleaner and admitted that the accident has taken place on 16.01.2001 and the vehicle has been duly insured with the appellant/insurance company and the driver of the van was possessing valid and effective driving license to drive the van.

5.Before the Tribunal, the insurance company has filed a counter statement contending that the accident has taken place due to the rash and negligent driving of the driver of the van and the injured, who subsequently died, travelled in the said van along with 19 others as unauthorised occupant passengers to attend a function relating to a festival in the nearby place and due to the improper driving, the van capsized and as a result of which, two of them have died on the spot and subsequently, during the treatment, the deceased in this case also died in the CMC Hospital. The deceased travelled in the Van as an unauthorized occupant passenger and the same amounts to violation of terms and conditions of policy and hence, the insurance company may be exonerated from any liability.

6.Before the Tribunal, widow of the deceased was examined as P.W.1 and one Mr.Vasudevan, who is the occurrence witness and also co-employee in the ill fated van, was examined as P.W.2 and documents Exs.P.1 to P.6 were marked on the side of the claimants. On the side of the respondents before the Tribunal, one Mr.Kesavan was examined as R.W.1 and no document was marked.

7.The Tribunal, after considering both oral and documentary evidence adduced on either side, has held that the deceased Vijayakumar is a Cleaner and as such, the policy coverage is existing in respect of the accident. The Tribunal has further held that the driver of the van drove the said vehicle in a rash and negligent manner causing the accident and he possessed valid license and held that both the owner of the van as well as the insurance company are jointly and severally liable to pay compensation and hence, the appeal is filed by the insurance company disputing and challenging the liability fixed upon them.

8.Learned counsel appearing for the appellant/insurance company would contend that the Tribunal has not properly appraised the facts of the case and has not rendered any discussion as to whether there is a valid coverage to the van at the time of the accident and there is no specific finding as to fixing the liability upon the insurance company and the plea raised in the counter statement by the insurance company was not considered before fastening the liability upon the insurance company.

9.Learned counsel appearing for the respondents 1 to 3/claimants would contend that the quantum of compensation arrived at by the Tribunal is just and proper and the deceased Vijayakumar travelled in the Van as a Cleaner and as such, by the terms and conditions of the policy, both the owner of the van and the insurance company are liable to pay compensation to the claimants.

10.After hearing both the parties and taking into consideration of the submissions made on the above points for determination arises in the case are as follows:-

(i) Whether the deceased Vijayakumar is a cleaner or unauthorized passenger?

(ii) Whether under the Insurance company policy/Ex.P6, there is policy coverage was extended to cleaner of the vehicle namely the van?

(iii) Whether the Insurance company is to be exonerated from the liability?

11.It is seen from the records that the factum of the accident is reflected under Ex.P1/FIR, which is recorded in filing by the charge sheet as could be seen from Ex.P4 and PW.1/Santhi is widow of the deceased.

12.On behalf of the respondents, before the Tribunal, the first respondent/owner of the vehicle filed a counter statement as extracted here, clearly admitting the happening of the accident on 16.01.2001. It is specifically stated that the driver of the van has having valid licence and the deceased Vijayakumar worked as Cleaner in the said Van under him.

13.RW.1/Kesavan, staff from the Insurance company has admitted in the cross-examination, while, he was confronted with the the evidence in the form of Ex.P6/copy of Insurance Policy and admitted that as per the policy, additional premium was paid in respect of 5 coolies and they are entitled to travel in the van, though it is a goods carrier.

14.At this juncture, it is pertinent to note that the policy of the Insurance company marked under Ex.P6 is extracted hereunder:-

SCHEDULE OF PERIMUM			
A. OWN DAMAGE - BASIC	Rs.8,650.00	B:LIABILITY TO PUBLIC-BASIC	Rs.2,779.00
LESS: Exclusion of Earthquake (Endtt.22)	-Rs.500.00	ADD:Legal Liability to Driver Coolies/other Employees in connection with the operation &/or maintaining &/or unloading of Motor Vehicle. Endtt.17 (5 person (s))	Rs.75.00
ADD: Deletion of Endtt.26 (Endtt.74)	Rs.1,297.50	Non Fare Paying Non Passengers as per Endtt. 14 (1 person (s))	Rs.50.00
LESS: 30 % for NC8	-Rs.2,834.25	ADD:For increased third party property damage risks. Section II-I(ii) Endtt.70 unlimited Amt.	Rs.75.00
Total (A)	Rs.6,613	Total (B)	Rs.2,979

Hence, in view of the specific averments made by the owner of the vehicle/first respondent before the Tribunal that the deceased was working as Cleaner and in view of the acceptance of RW.1/staff of the Insurance company regarding the payment of additional premium coupled with the documentary evidence of Ex.P6, is as extracted supra, the finding rendered by the Tribunal that the deceased travelled as a Cleaner not as an unauthorized passenger cannot be found fault with and the same is found to be well considered and well merited.

15.In view of the above finding arrived at by this Court, the points raised for consideration are answered in negative as against the Insurance company and the compensation awarded by the Tribunal under different heads appears to be reasonable and the appeal filed by the appellant/ Insurance company is, therefore, dismissed as devoid of merits and the award passed by the Tribunal is hereby confirmed.

16.In the result,

(i) the Civil Miscellaneous Appeal filed by the Insurance company is dismissed by confirming the award dated 24.01.2006 passed in MCOP.No.114 of 2002 on the file of the Motor Accidents Claims Tribunal, Gudiyatham, Vellore District.

(ii) the appellant/Insurance Company is directed to deposit the award amount as awarded by the Tribunal, with interest at the rate of 6% per annum, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit, the claimants are entitled to withdraw their respective share of the award amount as determined before the Tribunal and as per the ratio of apportionment is also fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal.

(iv) Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Gudiyatham, Vellore District.

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

+1cc to Mr.G.Vinodh Kumar, Advocate Sr.62694
+1cc to Mr.K.Padmanabhan, Advocate Sr.63250

CMA.No.1312 of 2012

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