



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2104 of 2012

and

M.P.No.1 of 2012

Divisional Officer,
New India Assurance Co Ltd.,
No.80, Arcot Road.,
Porur, Chennai-116

.. Appellant/Respondent No.2

Vs.

1. Raman

2. Kalliammal

3. E. Devendran

.. Respondents/Claimants 1,2 & 1st
repondent in Tribunal

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and order dated 06.03.2012 made in M.C.O.P.No. 359 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Tract Court No.I, Chengalpattu.

For Appellant : Mr.C. Ramesh Babu

For R1 and R2 : Mr.C. Prabakaran

For R3: : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 06.03.2012 made in M.C.O.P.No. 359 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Tract Court No.I, Chengalpattu.

2. The appellant herin is the insurer of the vehicle.The first and second respondents are the father and mother respectively of the deceased and the third respondent is the owner of the vehicle.



3. The brief facts, which are necessary for disposal of this appeal is that 26.12.2004 at about 1:30 p.m, the deceased namely Sathish alias Sathish Kumar was travelling in the vehicle bearing Registration No.TN-21-P-4317 belonging to the 1st respondent before the Tribunal from Thirukalikundram to Manamai village, on the Mamallapuram road. When the vehicle was nearing the Iyyappan temple at Echur village at about 2.00 p.m, the driver of the alleged vehicle applied the brakes suddenly without reducing the speed of the vehicle. On account of high speed and sudden brake, the vehicle capsized and as a result of which, the deceased Sathish and other persons who travelled with him, sustained injuries and all of them were admitted in CMCH Chengalpattu. Inspite of best medical care and efforts the said Sathish alias Sathish Kumar was succumbed due to the fatal injuries. The accident had occurred due to the rash and negligent driving on the part of the driver of the vehicle. At the time of the accident, the deceased was aged about 15 years. For the death of the said Sathish alias Sathish Kumar, the parents of the deceased have filed a claim petition in M.C.O.P.No. 359 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Fast Tract Court No.I, Chengalpattu, claiming a sum of Rs.5,00,000/- as compensation.

4. The appellant herein/Insurance Company resisted the claim petition by filing counter statement, stating that the third respondent herein has not produced the Insurance policy of the alleged vehicle involved in the accident and the driver does not possess a valid driving license.

5. Before the Tribunal, on behalf of the claimants 2 witnesses were examined and documents Ex.P1 to P.5 were marked. On the side of the respondents, before the Tribunal, neither oral nor documentary evidence was adduced. Father of the deceased examined himself as PW.1 and in his oral evidence he has stated that the negligence on the part of the driver is the cause for the accident. P.W.2/Tmt. Indrani, who travelled along with the deceased, in her oral oral evidence, has stated that the negligence on the part of the driver and the same is the cause of the accident. Ex.P1-FIR report clearly shows that a case has been registered for the offences under Sections 279,337 and 304(A) of I.P.C by the police, Mamallapuram Police Station.Ex.P3. Postmortem report reveals that the deceased died due to multiple injuries sustained by him.

6.Based upon the oral and documentary evidence, the Tribunal has come to the conclusion that the accident has taken place due to rash and negligent driving of the driver of the vehicle in which the deceased was travelled and awarded a compensation of Rs.3,10,500. Challengin the said quantum of compensation awarded by the Tribunal, the Insurance Company



has preferred this appeal before this Court.

7. The learned counsel appearing for the appellant/Insurance Company has taken a plea that the deceased has travelled in the vehicle as unauthorised passenger and therefore the appellant is not liable to pay compensation to the claimants and hence, prayed for allowing of this appeal.

8. I have heard, the learned counsel appearing for the appellant/Insurance company and the learned counsel appearing for the respondents 1 and 2 / Claimants and perused the materials available on record.

9. On a perusal of the award passed by the Tribunal, it is seen that the above said plea raised by the appellant/Insurance company that the deceased has travelled as an unauthorised passenger has not been taken in the counter statement and nor even projected during the cross-examination of P.W.1 assumes significance. Furthermore, it appears from the lower Court records that even the policy copy was not marked before the Tribunal and hence, this Court finds that for the first time, the above said plea that the deceased has travelled as an unauthorized passenger has neither even raised in the counter statement nor put to P.W.1 during the cross examination and no copy of insurance policy has been marked before the Tribunal and hence, taking into consideration the scope of this appeal also failure on the part of the insurance company for not raising the plea before the Tribunal and also for the other reasons stated above, I do not find any reason to interfere with the award passed by the Tribunal, hence, the appeal is dismissed.

10. In the result,

[i] This Civil Miscellaneous Appeal is dismissed and the Judgment and Decree dated 06.03.2012 passed by the learned Additional District Judge, Fast Track Court No.I (Motor Accidents Claims Tribunal), Chengalpattu, in M.A.C.T.O.P. No. 359 of 2005 is hereby confirmed.

[ii] The appellant/Insurance Company is directed to deposit the award amount, less the amount already deposited, if any, with interest at the rate of 7.5%p.a within a period of 8 weeks from the date of receipt of copy of this Judgment

[iii] On such deposit the respondents 1 and 2 herein/claimants are permitted to withdraw the award amount, by way of filing proper application before the Tribunal.

[iv] No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



smn

To.

1. The Additional District Judge,
(Motor Accident Claims Tribunal),
Fast Track Court-I, Chengalpattu.

+1cc to Mr.C.Ramesh Babu, Advocate SR.32159

+1cc to Mr.C.Prabakaran, Advocate SR.32145

C.M.A.No.2104 of 2012

and

M.P.No.1 of 2012

TM(CO)

CB(03/12/2019)