

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 08.04.2019

Judgment Delivered on : 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2977 of 2011

and

M.P.No.1 of 2011

The Divisional Manager,
National Insurance Company Ltd.,
No.165, Nethaji Road,
Manjakuppam, Cuddalore - 607 001.

...Appellant/2nd Respondent

Vs.

1.Gomathi

2.Minor.Swathi

(Minor rep.by mother guardian
next friend the 1st respondent Gomathi)

3.Chinnammal

...Respondents 1 to 3/Claimants

4.V.Kumaravel

...4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 26.08.2009, in M.C.O.P.No. 1065 of 2006, on the file of the Motor Accidents Claims Tribunal, (Principal District Judge), Cuddalore.

For Appellant :Mr.D.Bhaskaran

For R1 to R3 :Mr.D.S.Thirumavalavan

Fore R4 :Not ready in notice

JUDGMENT

The second respondent / Insurance Company before the Tribunal is the appellant herein.

2. The first respondent herein along with her minor and the grand-mother have filed M.C.O.P.No.1065 of 2006 claiming compensation for the death of her husband in a road accident alleging that:-

(i) on 23.08.2005 at about 08.45 p., when the 1st respondent's husband Muthukumaran was riding his TVS XL on the left side of the Cuddalore - Chidambaram Main Road with due caution and observing traffic rules, the 4th respondent's vehicle bearing Registration No.TN 21 X 8089, insured with the appellant/Insurance Company was driven by its driver and coming from the same direction in a rash and negligent manner, hit the

deceased from behind.

ii) Due to the impact, the moped rider was thrown out from the moped and sustained fatal injuries. The victim of the accident (the deceased) was immediately moved to Government Hospital, Cuddalore, where, in spite of treatment, the injured Muthukumaran succumbed to injuries. The accident was solely due to the rash and negligent driving of the Mahindra Van by its driver.

3. The appellant herein, who is the 2nd respondent before the Tribunal filed a counter statement alleging that the driver of the 4th respondent's vehicle bearing Registration No.TN 21 X 8089 on 23.08.2005 at about 4.00p.m., took the passengers from Kannarapetti to a Kalyanamandapam at Manjakuppam for a meeteing and after completion of the party at about 9.15 p.m, they have gone to Superintendent of Police and started at about 10.30 p.m from the office of the Superintendent of Police and reached to Kannarapettai at 11.00p.m.

4. Before the Tribunal that at the time of the accident, there is no valid policy coverage for the alleged vehicle. Besides also disputed the involvement of the van in the said accident.

5. The first claimant/widow of the deceased was examined herself as P.W.1 and occurrence witness was examined as P.W.2 and Exhibits P1 to P7 were marked. On behalf of the respondent/Insurance Company, R.W.1 and R.W.2 were examined and Exhibits R1 to R4 were marked.

6. On consideration of both oral and documentary evidence, the Tribunal has held that the involvement of the van in the said accident is proved in the manner known to law and the accident has taken place due to the rash and negligent driving on the part of the driver of the first respondent which is insured with the 2nd respondent and accordingly, held that both the first and second respondent are jointly and severally liable to pay the compensation and accordingly, awarded compensation of Rs.6,10,000/-

7. Aggrieved against the said finding and the quantum, the appellant/Insurance Company has preferred this appeal.

8. The learned counsel for the appellant/Insurance Company would contend that the involvement of the vehicle in the accident is disputed and the policy coverage of the vehicle is also in disputed.

9. Heard the learned counsel for the respondents/claimants.

10. The counter statement filed by the appellant/Insurance Company before the Tribunal that a specific plea was taken at the time of the accident, the offending vehicle was relegated in the office of the Superintendent of Police. However, no positive evidence has been placed before the Tribunal and to substantiate the said plea also assumes significance.

11. Furthermore, P.W.2-Thangamani, who was standing and chatting with one Subburayan and others is the complainant as well as an eye witness to the accident and furthermore, it is seen from Exhibits R3-Certified copy of order passed by J.M.No.II, Cuddalore in C.C.No.266 of 2008, it is seen that since the witnesses to the said case 'turned hostile', the Criminal Case has ended in acquittal. However, it is to be stated that the involvement of the vehicle has never been disputed during trial of criminal also assumes significance.

12. In view of the evidence of P.W.2 coupled with Exs.P1 and P2 and Ex.R3-Certified copy of order by the Magistrate Court, this Court has no hesitation to come to the conclusion that the involvement of the vehicle has been proved by the claimant in the manner known to law and the similar findings rendered by the Tribunal in this regard is hereby confirmed.

13. It remains to be stated that though R.W.1 and R.W.2, the Senior Assistant of Insurance Company has toed in line with the evidence of R.W.1 and also submitted the claim form submitted by the 1st respondent as Ex.R2 were disputing and denying the involvement of the vehicle for the reasons best known and they were not examined before the Tribunal also assumes significance.

14. Further, taking into consideration of the oral evidence of P.W.2 coupled with Exs.P1 and P2 and Ex.R3, this Court is of the considered view that the involvement of the vehicle is proved in the manner known to law and the findings rendered by the Tribunal that the accident has taken place due to the rash and negligence of the driver on the part of the driver of the first respondent is hereby confirmed and in view of Ex.P6-copy of R.C.Book and Ex.P7-Copy of Insurance Policy for the vehicle, the Tribunal has rightly held that both the first and second respondent are jointly and severally liable to pay the compensation is well consideration and well merited does not warrant any interference by this Court at this appellate stage.

15. On the point of compensation, after hearing both sides and after perusing the records, I find that the compensation awarded under different heads is just and reasonable and they cannot be termed as excessive. In this view of the matter, the said compensation is confirmed.

16. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The order passed by the Tribunal is upheld.

(iii) The appellant-Insurance Company is directed to deposit the entire amount awarded by the Tribunal together with costs and interest at the rate of 7.5% per annum and if not entirely deposited, the same be deposited after deducting the amount already deposited and the amount be deposited to the credit of M.C.O.P.No.1065 of 2006 on the file of the Motor Accidents Claims Tribunal, (Principal District Judge), Cuddalore within a period of eight weeks from the date of receipt of a copy of this order.

(iv) The claimants are permitted to withdraw the above amount, as apportioned by the Tribunal, in the manner known to law.

(v) As regards the share of the minor claimant, the same shall be deposited in any Nationalised Bank in an interest bearing Fixed Deposit scheme until they attain majority and the interest accrued thereon shall be withdrawn by the first claimant/mother of the deceased.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

nvi

To

1.The Principal District Judge
Motor Accidents Claims Tribunal,
Cuddalore.

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

+1 CC to Mr.D.Bhaskaran, Advocate sr 63620.

+1 CC to Mr.D.S.Thirumavalavan, Advocate sr 63545.

C.M.A.No.2977 of 2011 and
M.P.No.1 of 2011

SV(CO)
SP(03/01/2020)