

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.594 of 2012
and MP.No.1 of 2012

The New India Assurance Company,
Cuddalore.

... Appellant/2nd Respondent

Vs.

1. Murugan
2. Shanthi

...1st Respondent/Petitioner
...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 30.08.2011 made in MCOP No.28 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court No.1) Chidambaram.

For Appellant : Mr.Elveera Ravindran
For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 30.08.2011 made in MCOP No.28 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court No.1) Chidambaram.

2. The Insurance company is the appellant herein. Though the respondents have been served, none appears for the respondents despite the name is printed in the cause list.

3. The learned counsel for the Insurance company would contented that Ex.P7 legal heir certificate is not genuine. The said legal heir certificate alleged to have been issued to the claim petitioner Mr.Murugan as a foster son of Mrs.Kalyani is a forged document and the Trial Court wrongly awarded compensation.

4. Perused the records and documents filed before the Trial Court.

5. It is seen from the lower court records that the claim petitioner one Mr.Murugan preferred MCOP alleging that on 20.10.2005 at about 16.30hrs the deceased was standing in the extreme mud portion of main road at Adhivaraganallur. At that time, the first respondent's vehicle bearing Regn.No.PY-01/

x-2999, driven by its driver rashly and negligently dashed against the deceased and the deceased died on the spot.

6. Before the Tribunal, the claimant was examined as P.W.1, Mr. Magesh, who is an eye-witness was examined as P.W.2. and P.W.3 also was examined. Ex's. P1 to P7 were marked. On behalf of the appellant/insurance company, Mr. Selvam, Junior Assistant, working in the Tashildar office, Chidambaram was examined as RW1 and Distribution Register for the year 2001 was marked as Ex.R1 and Form-II Register was marked as Ex.R2 and Distribution Receipt Register was marked as Ex.R3 and the Legal Heir Register maintained in the office of the Taluk Tashildar office for the year 2010 was marked as Ex.R4 and serial No.110 to 118 from Ex.R4 was specifically marked as Ex.R5 and serial No.265 R 3-4212/2010-4240/2010 page No.10 of Ex.R4 is specifically marked as Ex.R6.

7. The Tribunal based upon oral and eye witness namely P.W.2 coupled with Ex.P1- FIR, Ex.P2- Motor Vehicle Inspector's Report came to a conclusion that the accident occurred due to a rash and negligent driving of the first respondent's driver, accordingly, held both are liable to pay the compensation.

8. The Insurance company filed a counter before the Tribunal alleging that as per the records maintained in the Taluk office of the Chidambaram, no legal heir certificate for the death of the deceased Kalyani W/o Jaganathan @ Duraisamy was issued from the office of Tashildar and hence contended that the claim of the petitioner that the petitioner is not a legal heir of the said deceased and therefore disputed the claim made by the claimant to claim compensation under the Motor Vehicles Act.

9. When such a plea is raised by the insurance company in the counter statement, it is seen from the records that one Chelladurai aged about 72 years was examined as PW3 before the tribunal who is the elder brother of the deceased. He also stated that the claimant Murugan is the foster son of the deceased Kalyani.

10. Per contra, before the Tribunal the Insurance company has summoned the Assistant from the Tashildar office and also marked Distribution Register for the year 2001, Form-II Register, Distribution Receipt Register and the Legal heir Register maintained in the office for the year 2010. In, Ex.R1 and R5, no application has been marked by the office of the Tashildar, Chidambaram and no legal heir certificate was issued on behalf of the deceased.

11. The Tribunal has taken a view that since the signatory of the document was not examined, rejected the plea of the insurance company and awarded the MCOP.

12. After hearing the learned counsel for the appellant/insurance company and after perusing the documentary evidences Ex.R1 to R4. This Court taking note of the fact that Ex.R1, R2 maintained in the Government office. In the normal course of, on receipt of the application that are made for legal heir certificate, entries are made in the register maintained by the Taluk Office for issuance of legal heir certificate. In respect of the alleged legal heir certificate no such entry was made in the office of the Taluk office nor the certificate issued by the said office.

13. Accordingly, this Court considered the documents Ex.R1 and Ex.R2 which are being regularly maintained by the officials is held to be admissible in evidence as the same falls Under section 35 of the Indian Evidence Act. In view of the specific plea raised for the counter statement that the claim of the legal heir of the deceased is not a bonafide one and Ex.P7 is a forged document and not a genuine document and issued plea of the insurance company coupled with Ex.R1 & R2 this Court holds that the Tribunal's award is liable to be set-aside.

14. Accordingly, the award passed by the Tribunal is hereby set-aside and the Civil Miscellaneous Appeal is allowed. The learned counsel for the appellant submitted that already the entire award amount was deposited by them. Hence, the Insurance company/appellant is permitted to withdraw the same. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Additional District Court (Fast Track Court No.1)
Chidambaram.

Copy To: The Section Officer, V.R.Section,
High Court of Madras

+1 cc to M/s.Elveera Ravindran,Advocate Sr.No. 26737

AKM/14.10.19/3P-4C /

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