

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.733 of 2017

THE NEW INDIA ASSURANCE CO. LTD.
NO. 45 MOORE STREET CHENNAI 1. ... Appellant

Vs

1 THIRU. SAI KRISHNAN
2 TMT. RAJESHWARI
3 MR. N. RAJU ... Respondents

PRAYER: Civil Miscellaneous Appeal filed to set aside the decree and judgment passed in M.C.O.P.No. 4950 of 2004 dated 12/01/2016 on the file of the Learned Motor Accident Claims Tribunal (II Judge) Small Causes Court, at Chennai District.

For appellant : Mr.J.Chandran

For respondents : Mr.F.Terry Chellaraja
for M/s.V.Velu, for R-1 and R-2

R3 : Died

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The appellant challenged the liability to pay compensation before the Motor Accident Claims Tribunal in M.C.O.P.No.4950 of 2004. The Tribunal, without addressing the issue raised by the appellant, allowed the claim petition and a direction was issued to the Insurance Company to pay compensation. Feeling aggrieved, the New India Insurance Company has come up with this Civil Miscellaneous Appeal.

2. The respondents 1 and 2 filed a claim petition in M.C.O.P.No.4950 of 2004 before the Motor Accident Claims Tribunal, Chennai, claiming compensation on account of the death of Thiru.Sai Surya Kumar at about 3 a.m. on 16 July 2004 at ECR, near Kunnathur Village, in the District of Kanchipuram. While the deceased was driving the car bearing No.T.N. 01 K 6226, the tipper lorry bearing no.TN 21 R 8623 came from behind and hit

against the car, resulting in the instantaneous death of Thiru.Sai Surya Kumar.

3. The respondents 1 and 2 made a claim before the Motor Accident Claims Tribunal, Chennai, to pay a sum of Rs.16,00,000/- as compensation.

4. Before the Tribunal, the appellant contended that the lorry was falsely implicated and there was no vehicle involved in the accident. According to the appellant, the vehicle hit against a standing tree, resulting in the death of Thiru.Sai Surya Kumar.

5. The first information report recorded by the police indicates that a statement was made by the brother-in-law of the deceased that the car hit against a tree, resulting in causing grievous injuries to the deceased. However, before the Trial Court, evidence was let in to show that the tipper lorry bearing Registration No.TN 21 R 8623 was instrumental in causing the accident. The charge sheet and rough sketch, Exs.P13 and P.14 were relied on by the Trial Court to prove that the driver of the tipper lorry was responsible for the accident.

6. There was no discussion, much less meaningful discussion by the learned Judge to arrive at the factual conclusion as to whether the lorry was actually involved in the accident. The Tribunal simply relied on the evidence tendered by P.Ws 1 and 3 to arrive at the finding that the lorry hit against the car driven by the victim. The Tribunal was expected to consider the totality of the case pleaded by the parties to arrive at a decision as to whether the lorry was actually involved in the accident. Merely because the driver of the lorry has not come to the witness box, it cannot be said that the lorry insured with the appellant hit against the car. This is more so on account of the fact that the brother-in-law of the deceased himself has given a statement before the police at the earliest point of time that the vehicle hit against a standing tree and the same resulted in causing grievous injuries to the deceased.

7. After hearing the learned counsel for the parties and on a perusal of the entire materials on record, we are of the view that the Trial Court has not answered the issues raised by the appellant. It is true that the appeal is a continuation of the proceeding and even this Court is at liberty to re-appreciate the evidence. However, that is not the facts of the case on hand. The Trial Court has not assessed the available evidence to arrive at a right conclusion. We are therefore of the view that the matter requires fresh consideration.

8. The Award dated 12 January 2016 is set aside. The claim petition in M.C.O.P.No.4950 of 2004 is restored to file.

9. We direct the Tribunal to give reasonable opportunity to the parties to produce additional materials if any, to substantiate their respective contentions in the original petition. The Tribunal shall consider all the materials and arrive at a finding as to whether the lorry bearing registration no.TN 21 R 8623 was involved in the accident in question. It is also open to the Tribunal to consider the quantum afresh, taking into account the pleadings and evidence on record. Since the original petition is of the year 2004, every effort should be taken by the Tribunal to dispose of the matter on merits without in any way being influenced by the observation in this judgment. In any case, the matter should be disposed of within a period of three months from the date of receipt of a copy of this judgment.

10. The civil miscellaneous appeal is allowed. No costs. Consequently, C.M.P.No.4074 of 2017 is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
(II Judge) Small Causes Court
Chennai District.

2. The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.J.Chandran, Advocate SR.No.78548

+1cc to M/s.V.Velu, Advocate SR.No.77800

C.M.A.No.733 of 2017

CNR (CO)
GMY (10/02/2020)