

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.653 of 2020

1.Veeraraghavan

2.Gowri W/O.Veeraraghavan ... Appellants/Petitioner

Vs.

1.K.Pandiyarajan ...Respondent/Owner of the Vehicle

2.Royal Sundaram Alliance
Insurance Company Limited,
Sundaram Towers,
45 & 46, Whites Road,
Chennai. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.08.2019, made in M.C.O.P.No.699 of 2014 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellants : Mr.R.Chellamuthu

For R2 : Ms.C.Harini
for Mr.N.Vijayaraghavan

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 14.08.2019, made in M.C.O.P.No.699 of 2014 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

2.The appellants are the claimants in M.C.O.P.No.699 of 2014 on the file of the Motor Accident Claims Tribunal, I Additional

District and Sessions Court, Vellore. They filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of their son viz., Yuvaraj, who died in the accident that took place on 08.10.2007.

3. According to the appellants, on 08.10.2007 at about 09.00 P.M., while the deceased was travelling as a cleaner in the lorry bearing Registration No.TN 25 W 9699 on Dharmapuri - Salem road, the driver of the lorry drove the same in a rash and negligent manner and dashed on the rear side of the bus bearing Registration No.TN 29 F 2349 which was proceeding in front of the lorry. Due to the said impact, the driver of the bus lost its control and dashed against a hill situated on the left side of the road and stopped. But, the lorry bearing Registration No.TN 25 W 9699 after dashing the bus, further went in a rash and negligent manner and again dashed against another lorry bearing Registration No.KA 01 G 2697 which was coming in the opposite direction and at last, the lorry bearing Registration No.TN 25 W 9699 stopped after hitting against the hill. In the said accident, the said Yuvaraj went underneath the heap of mud and died on the spot. The deceased was aged 21 years at the time of accident and was working as a Cleaner under the 1st respondent and was earning a sum of Rs.10,000/- per month at the time of accident. Therefore, the appellants filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation against the respondents 1 and 2 being the owner and insurer of the lorry bearing Registration No.TN 25 W 9699 respectively.

4. The 1st respondent being the owner of the lorry bearing Registration No.TN 25 W 9699 remained exparte before the Tribunal.

5. The 2nd respondent-Insurance Company being the insurer of the lorry bearing Registration No.TN 25 W 9699 filed counter statement and denied various averments made by the appellants. According to the 2nd respondent-Insurance Company, the accident has not occurred as alleged by the appellants. At the time of accident, the driver of the bus bearing Registration No.TN 29 F 2349 drove the same in a rash and negligent manner and abruptly applied brake without any reason, that too without any signals. In spite of best efforts taken by the driver of the lorry bearing Registration No.TN 25 W 9699, the lorry came into contact with the said bus. Therefore, the driver of the bus bearing Registration No.TN 29 F 2349 was only responsible for the accident. At the time of accident, the driver of the lorry bearing Registration No.TN 25 W 9699 was not having valid driving license. The deceased Yuvaraj travelled in the lorry as second driver and as per the policy issued by the 2nd respondent-Insurance Company there is no coverage for the risk of second

driver. Therefore, the 2nd respondent-Insurance Company is not liable to pay any compensation to the appellants. The appellants have to prove that they are the legal heirs of the deceased by producing valid documents. The appellants have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the claimants is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st appellant examined himself as P.W.1 and one Murugan, who is the driver of the bus bearing Registration No.TN 29 F 2349 was examined as P.W.2 and 5 documents were marked as Exs.P1 to P5. On behalf of the 2nd respondent-Insurance Company, one R.Sudharsan was examined as R.W.1 and 6 documents were marked as Exs.R1 to R6.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry bearing Registration No.TN 25 W 9699 and directed the 1st respondent, being the owner of the lorry bearing Registration No.TN 25 W 9699 to pay a sum of Rs.9,77,200/- as compensation to the appellants and dismissed the claim petition as against the 2nd respondent-Insurance Company on the ground that there is no proof to show that the deceased travelled as cleaner and also there is no premium paid for spare driver.

8.Challenging the portion of the award dated 14.08.2019, made in M.C.O.P.No.699 of 2014 dismissing the claim petition as against the 2nd respondent-Insurance Company and for enhancement of compensation, the appellants have come out with the present appeal.

9.Though the appellants have raised various grounds with regard to enhancement of compensation in the grounds of appeal, at the time of arguments the learned counsel appearing for the appellants restricted his arguments only with regard to dismissal of the claim petition as against the 2nd respondent-Insurance Company and made the following submissions. The Tribunal ought to have accepted the contention of the appellants that the deceased travelled in the lorry bearing Registration No.TN 25 W 9699 as a cleaner at the time of accident. The 1st respondent-owner of the lorry bearing Registration No.TN 25 W 9699 remained exparte before the Tribunal and there is no contra evidence about the occupation of the deceased. The 2nd respondent-Insurance Company filed Exs.R2 to R5 and the same were not proved by examining the appellants and prayed for setting aside the portion of the award dismissing the claim

petition as against the 2nd respondent-Insurance Company.

10.The learned counsel appearing for the 2nd respondent-Insurance Company made submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

12.It is the contention of the appellants that the deceased travelled in the lorry bearing Registration No.TN 25 W 9699 as a cleaner. The 2nd respondent-Insurance Company in the counter statement denied that the deceased travelled as a cleaner and contended that the deceased worked only as a driver and travelled at the time of accident as spare driver. The appellants except pleadings and oral evidence, failed to produce any documents to show that deceased was only a cleaner and not a driver. On the other hand, the 2nd respondent-Insurance Company has produced Ex.R2/copy of the notice sent by the appellants in W.C.No.236 of 2008 filed by the appellants, Ex.R3/Xerox copy of petition in W.C.No.236 of 2008 on the file of the Deputy Commissioner of Labour-I, Chennai, Ex.R4/dismissal order passed by Deputy Commissioner of Labour-I, Chennai in W.C.No.236 of 2008 and Ex.R5/Xerox copy of petition in W.C.No.240 of 2008 on the file of Deputy Commissioner of Labour-I, Chennai, (W.C.No.117/2018 on the file of Joint Commissioner of Labour, Vellore). The 2nd respondent-Insurance Company filed copy of the petition in W.C.No.240 of 2008 filed by the legal heirs of the driver of Anbu @ Anbalagan before the Deputy Commissioner of Labour-I, Chennai, (W.C.No.117/2018 on the file of Joint Commissioner of Labour, Vellore). Before the Deputy Commissioner of the Labour-I, Chennai in W.C.No.236 of 2008, the appellants have stated that the deceased was working as a driver. In view of the such stand taken by the appellants and the contention of the 2nd respondent-Insurance Company that no extra premium was paid for spare driver, the Tribunal dismissed the claim petition as against the 2nd respondent-Insurance Company. There is no error in the said finding of the Tribunal warranting any interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.9,77,200/- along with interest and costs is confirmed. The 1st respondent is directed to deposit the award amount along with interest and costs, less the amount if any already deposited within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.699 of 2014

on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

Motor Accident Claims Tribunal,
The I Additional District and Sessions Judge,
Vellore.

+1cc to Mr.A.PaneerChelvam, Advocate, sr no.16672
+1cc to Mr.N.Vijayaraghavan, Advocate, sr no.18304

C.M.A.No.653 of 2020

PP(CO)
RMP(19/01/2021)

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