

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1326 of 2009

and

M.P.No.1 of 2009

Oriental Insurance Co. Ltd.,
Divisional Manager,
Divisional Office,
Jayalakshmi Mansion,
Dr.Rajkumar Road,
Nagaraj Nagar,
Bangalore - 10 ... Appellant/2nd Respondent

Vs.

1. Madappa
2. Nagamma
3. M.Sathish ... Respondents/Petitioner/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 09.10.2006 made in M.C.O.P.No.238 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur.

For Appellant : Mr.S.Arunkumar

For R3 : Mr.K.Shakespeare

R1 & R2 - Not Ready in Notice

Judgment

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 09.10.2006 made in M.C.O.P.No.238 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur.

2. The case of the appellant is that on 25.01.2004 at about 01.15 p.m., the son of the first and second respondents, named Sivakumar, was proceeding along with Marriage Stage Decoration Goods in the third respondent's Tata 407 Tempo bearing

Registration No.KA-05-7215 accompanying with his friends from Kudichipalli Village to Denkanikotta Venkateshwara Thirumana Mandapam. At that time, the driver of the Tempo driven the same in a rash and negligent manner and caused accident. As a result, the Sivakumar sustained fatal injuries and died on the spot itself. At the time of accident, he was aged 25, and before the accident, he was working as Operator in a Factory as well as doing Real Estate business and was earning Rs.7,000/- per month. Since he died in the accident, his parents, the first and second respondents herein, filed a petition before the Motor Accidents Claims Tribunal, Sub Court, Hosur, claiming Rs.6,00,000/- as compensation under various heads.

3. The appellant, who is the insurer of the third respondent's Tempo, filed a counter affidavit before the Tribunal stating that the accident was not happened as alleged in the petition. On 25.01.2004, while the driver of the third respondent drove the Tempo bearing Registration No.KA-05-7215 slowly, cautiously, observing all the rules, on the extreme left side of the road in Kaduchipalli to Denkanikotta road towards Denkanikotta, one bullock suddenly started to cross the road. To avoid hit on the bullock, the driver of the Tempo applied sudden brake and swerved the same towards extreme left side of the road. At that time, the Tempo capsized on the road. There was no fault on the part of the driver of the said Tempo. Hence, they were not liable to pay compensation to the first and second respondents/claimants.

4. Further, It has been stated in the counter affidavit that the said vehicle was to be used for transporting the goods only. But the deceased had traveled in the vehicle as an unauthorized passenger, which is in violation of policy condition and M.V.Act. If any award was to be passed to the claimants, the third respondent alone was responsible for the same as he violated the policy condition and they were not liable to indemnify the claimants. Moreover, it has been stated that the alleged age, occupation and income of the deceased were not true and the amount of compensation claimed was highly excessive.

5. During the trial, on the side of the first and second respondents/claimants, one P.Puttusamy was examined as PW1, the first respondent was examined as PW2, one Dr.T.V.Gandhi was examined as PW3 and Exs.P1 to P15 were marked. On the side of the appellant and the third respondent, neither any witness was examined nor any document was marked.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded Rs.3,37,000/- as compensation as given below :

S.No.	Description	Amount
1.	Loss of Income	3,12,000
2.	Pain and Sufferings	20,000
3.	Funeral Expenses	5,000
	Total	3,37,000

7. Aggrieved by the award, the appellant insurance company has filed this appeal before this Court stating that the Tribunal failed to note that the third respondent has violated the policy conditions by permitting carry passengers in his goods vehicle, and also, failed to note that the first and second respondents have not filed any authenticated documentary evidence to prove that the deceased had traveled along with the goods at the time of accident.

8. The learned counsel for the third respondent has submitted that the vehicle had been insured with the appellant and the policy was in force at the time of accident. Hence, the appellant is liable to pay compensation to the claimants. Further, the learned counsel has relied upon various citations of this Court as well as the Hon'ble Apex Court in support of his case.

9. Heard the learned counsel for the appellant and the learned counsel for the third respondent, and perused the materials available on record.

10. Now the dispute is only with regard to fixing the liability on the appellant, and as far as the quantum of compensation is concerned, there is no dispute.

11. It is an admitted fact that the accident had occurred on 25.01.2004 and the alleged Tempo bearing Registration No.KA-05-7215 was insured under the appellant at the time of accident. On the date of accident, the PW1 P.Puttusamy also traveled along with the deceased. He has stated in his deposition that on 25.01.2004, when he was carrying decoration goods for his marriage along with deceased and some other coolies in the third respondent's Tata 407 Tempo bearing Registration No.KA-05-7215 to go to Denkanikotta Venkateshwara Thirumana Mandapam, the driver of the Tempo driven the same in a rash and negligent manner and caused accident. With regard to the same, the Tribunal has perused Ex.P1 Copy of F.I.R which was filed against the third respondent's driver. While doing so, the Tribunal has found that the deceased had not traveled as a passenger in the third respondent's vehicle and only he had taken the decoration goods for the marriage of PW1. Further, on

the side of the appellant and the third respondent, no evidence was placed to disprove the version of PW1, therefore, the Tribunal has held that the third respondent as owner of the vehicle and the appellant as insurer of the same are liable to pay compensation to the claimants.

12. This Court do not find any error in the decision taken by the Tribunal in fixing the liability on the appellant as well as the third respondent, hence, this Court is not inclined to interfere with the same and confirms the order of the Tribunal.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

raja
To

1. The Motor Accidents Claims Tribunal,
Sub Court, Hosur.
2. The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.1326 of 2009
and
M.P.No.1 of 2009

vsn II[co]
srg 21/01/2021

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