

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2857 of 2009

1.Ramamurthy

2.Tmt.Jothi

...Appellants/Claimants

vs.

1.K.Kumarasamy

2.The Branch Manager,
ICICI Lombard General Insurance,
No.17, Arthi Chamber, Ground Floor,
Shop No.4, No.189, Anna Salai,
Chennai - 600 006.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 16.04.2008 in M.C.O.P.No.146 of 2005 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Gingee.

For Appellants : Mr.C.Prabakaran

For Respondents : Mr.R.Sreevidhya for R2
R1 - name printed, No appearance

J U D G M E N T

The appellants are the claimants in MCOP.No.146 of 2005 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Gingee. They filed the above claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.12,00,000/- for the death of their son, namely, Iyanar in a road accident that took place on 08.09.2005.

2. On 08.09.2005, at about 11.30 pm, the deceased Iyanar was travelling in a Tractor bearing Registration No.TN 20 L 8975 after completion of his work and when the Tractor was nearing Asai Company at Irungattukottai, the driver of the Tractor drove the vehicle in a rash and negligent manner, as a result of

which, the deceased was thrown away from the Tractor and the Tractor ran over him and he sustained grievous injuries on his head and all over his body. The deceased Iyanar was taken to General Hospital, Chennai. However, he died in the Hospital. According to the appellants / claimants, the accident happened only because of the rash and negligent driving of the driver of the Tractor and therefore, they filed the MCOP claiming compensation for the death of their son.

3. Before the Tribunal, on the side of the appellants / claimants, PW1 and PW2 were examined and Exs.P1 to P4 were marked. On the side of the respondents, RW1 and RW2 were examined and Exs.R1 and R2 were marked.

4. The learned Subordinate Judge, Gingee after analysing the evidence on record, awarded compensation of Rs.4,25,000/- together with interest at the rate of 7.5% per annum and directed the owner of the Tractor to pay the compensation to the appellants / claimants. Challenging the award passed by the Tribunal, the appellants filed this appeal.

5. The learned counsel appearing for the appellants / claimants submitted that the Tribunal ought to have directed the second respondent who is the insurer of the Tractor to pay the compensation to the appellants / claimants and then recover the same from the owner of the Tractor. He further submitted that the Tribunal failed to note that (copy of the policy) Ex.R1 shows that additional premium was received by the insurer for coverage of one coolie other than the driver. He submitted that the Tribunal erred in holding that the deceased travelled in the Tractor as gratuitous passenger at the time of the accident. He therefore prayed for directing the Insurance Company to pay the compensation to the appellants / claimants.

6. The learned counsel appearing for the second respondent / Insurance Company submitted that the Tribunal after considering both oral and documentary evidences in a proper perspective, directed the owner of the Tractor to pay the compensation to the appellants / claimants and hence prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants / claimants and second respondent and perused the materials available on record.

8. A perusal of the Insurance Policy (Ex.R2) shows that the Tractor bearing Registration No.TN 20 L 8975 is used only for agriculture purpose and no passengers are allowed to travel in the said vehicle. From the materials available on record, it is seen that the deceased travelled only as a gratuitous passenger in the Tractor. In a decision in CMA.Nos.1529 to 1533 of 2015, delivered on 24.10.2018, the Division Bench of this High Court has held as follows:

"In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner."

In the case on hand, the deceased Iyanar was a gratuitous passenger and he was not covered under the Insurance Policy. In view of the above decision, this Court is not inclined to interfere with the award passed by the Tribunal and the owner of the Tractor bearing Registration No.TN 20 L 8975 is liable to pay compensation to the appellants / claimants.

9. In the result, this Civil Miscellaneous Appeal is dismissed. The first respondent is directed to deposit the award passed by the Tribunal along with interest and costs, less the amount already deposited if any, to the credit of

MCOP.No.146 of 2005 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Gingee within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellants / claimants are permitted to withdraw the award amount along with interest and costs, as per the apportionment made by the Tribunal, less the amount if any, already withdrawn. No costs.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

sbn

To

1.The Motor Accidents Claims Tribunal,
Subordinate Court, Gingee.

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

+1 Cc to Mr.C.Prabakaran, Advocate sr 12114.

+1 CC to Ms.R. Sreevidya, Advocate sr 13026.

C.M.A.No.2857 of 2009

RSV(CO)
SP(20/04/2021)