

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1015 of 2012
and MP.No.1 of 2012
and CMP.No.1808 of 2017

M/s.Reliance General Insurance Co. Ltd.,
Sakthi Super Market Building
3rd floor, Perundurai Road,
Erode - 638 011. Appellant/3rd Respondent

Vs.

1. S.Poongodi
2. A.Ravichelvan Nehru
3.Tamil Nadu State Transport Corporation Ltd,
(Coimbatore Division - II) Ltd.,
Rep by its Managing Director,
Chenniamalai Road, Erode. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.584 of 2008 dated 08.08.2011 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Tiruppur.

For Appellant : Mr.E.Rajadurai
for Mr.M.B.Raghavan

For Respondents : Mr. Ma.P.Thangavel, for R1.
R2 - Served. No appearance.
Mrs.R.T.Sundari For R3

J U D G M E N T

This appeal has been filed by the insurance company against the judgment and decree made in MCOP.No.584 of 2008 dated 08.08.2011 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Tiruppur.

2. The case of the first respondent/claimant before the Tribunal is as follows :-

On 20.03.2008 at about 3.00pm the deceased S.Prakash was travelling in his motorcycle bearing Reg.No.TN33-AK-7030, one Mundirraj being the driver drove the same from Covai to

Salem Main Road, from east to west on the extreme left of the road. While nearing Puthupalayam privu thoppukadu, Ravichelvan Nehru being the driver of the bus bearing Reg.No.TN33-N-1957 drove the same in a rash and negligent manner from west to east direction without horn and suddenly hit the motorcycle of the deceased. Due to the accident, the deceased and rider were thrown away and sustained severe injuries on their head, chest, hip and all over the body. The deceased Prakash/pillion rider died on the spot. The rider of the motor cycle/Mundirraj died on the way to hospital. The driver of the motorcycle was solely responsible for the accident. A case in Cr.No.71/2008 for the offence under Section 279 and 304(A) IPC on the file of the Parumanallu Police Station. The deceased Prakash was earning a sum of Rs.5,000/-p.m. by doing cell phone and two wheeler business.

3. The 3rd respondent/insurance company filed counter stating that the driver of the bus is not having a valid driving licence to drive the bus. The accident should have caused due to the carelessness driving of the Bus driver. Hence, the insurer is not liable to pay the compensation.

4. In order to prove the case of the claimant, the claimant examined PW1 to PW3 and marked Ex.P1 and Ex.P4. The respondent/insurance company examined DW1 and DW2 and marked Ex.D1 on the side of the respondent/insurance company.

5. Heard both sides and perused the materials available on record.

6. The Court below had fixed the contributory negligence on the part of the deceased persons (i.e., rider and pillion rider) as 75% and 25% on the part of the Transport Corporation and also held that there was no clear evidence with regard to who is the driver and pillion rider of the motorcycle. In the absence of any such direct eyewitnesses, the Court below come to the conclusion that based on the FIR, wherein the driver of the bus lodged a complaint before the police station stating two persons coming from east to west in Covai to Salem Main Road, at that time the bus proceeding to west to east in the opposite direction. It is the case of the transport corporation that the two persons driving the motorcycle tried to overtake the lorry from right side came and dashed against the bus driven by the complainant. Due to the accident, one died on the spot and the other died on the way to hospital.

7. In the absence of any eyewitness, the trial Court relied on the FIR and come to the conclusion by fixing 75% liability on

the insurer of the motorcycle and 25% on the Transport corporation. In the claim petition, it is stated that the deceased Mundirraj driven the motorcycle who died on the way to the hospital and the deceased Prakash is the pillion rider who died on the spot. In the absence of any valid evidence, the Court below comes to the conclusion with the statement of the bus driver. The Court below ought not to have considered the said aspect regarding and in the absence of any other evidence let in by the police without rough sketch of the accident spot being marked.

8. For the aforesaid reasons, this Court is inclined to remit back the matter before the Trial Court for fresh consideration. The Motor Accident Claims Tribunal, Additional Subordinate Judge, Tiruppur is hereby directed to decide the issue afresh within a period of six months from the date of receipt of a copy of this judgment. The learned counsel for the appellant/insurance company submits a memo stating that a sum of Rs.25,000/- as statutory deposit and sum of Rs.4,74,271/- (award amount with accrued interest) has been deposited as per the stay order dated 04.06.2012 in MCOP.No.584 of 2008 on the file of the MACT, Principal Subordinate Judge, Tiruppur and seeks permission to withdraw the same. Since, the appeal is remitted back to the trial Court for fresh consideration, it is open to the Trial Court for granting permission for withdrawal of the amount or not shall be decided after disposal of the MCOP.No.584 of 2008.

9. With the above observation, the civil miscellaneous appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

tsh
To

The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruppur.

Copy to

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

+1cc to M/s.Ma.P.Thangavel, Advocate Sr.Sr.5683
+1cc to Mr.M.B.Gopalan, Advocate Sr.6348

C.M.A.No.1015 of 2012

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