

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2555 of 2011

1. P. Jothi W/o. T. Parasuraman

2. T. Parasuraman S/o. Thangavelu

...Appellants/Claimants

Versus

1. M/s. Palaniyappa Weaving
Establishment No.1751,
13th Main Road, Anna Nagar West,
Chennai - 600 040.

2. The Oriental Insurance Company Limited,
Zonal Office, Vellore. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the order and decree dated 12.12.2001 made in M.C.O.P.No.26 of 1999 on the file of the Motor Accident Claims Tribunal, (Sub Court), Cheyyar.

For Appellant : Mr.C. Prabakaran

For Respondent-2 : Mr.M.J. Vijayaraghavan

J U D G M E N T

The claimants have preferred this appeal against the Judgment and decree in M.C.O.P.No.26 of 1999 dated 12.12.2001 on the file of the Motor Accident Claims Tribunal, (Sub-Court), Cheyyar, in and by which the Tribunal has dismissed the claim petition seeking for compensation of Rs.1,00,000/- (One Lakh Only) for the death of their daughter in the road accident.

2. The 1st appellant and 2nd appellant who are mother and father of the deceased respectively, are the claimants before the Tribunal and the 1st respondent herein is the owner of the offending vehicle and 2nd respondent is the insurer of the vehicle. The parties are referred to in the the same ranking as before the Tribunal.

3. The factual matrix of the case is as follows:

On 22.07.1993, at about 2.00pm the petitioners 1 and 2 along with their daughter were sitting under a tree near Puthupalayam Koot Road, awaiting for a bus to reach Pavor Village. At that time, a van bearing Registration No.TSL 5355 proceeding towards Wandavash from Kanchipuram dashed against the 1st petitioner and her minor daughter named as Umamaheswari. In the result, the 1st petitioner sustained grievous injuries all over the body and her daughter Umamaheswari died on the way while transit to the Hospital. The accident was taken place due to rash and negligent driving of the 1st respondent' driver of the vehicle. Hence, the mother and father of the deceased filed a claim petition in C.M.A. No.26 of 1999 on the file of the Motor Accident Claims Tribunal, (Sub Court), Cheyyar, wherein the Learned Judge has dismissed the claim petition filed by the petitioners on the ground of non-production of insurance policy of the offending vehicle. Feeling aggrieved by the award passed by the Tribunal, the Claimants have preferred the present appeal seeking for compensation in the result of road accident, the petitioners have lost their only daughter in the fatal accident.

4. The learned counsel appearing for the petitioners/appellants herein would submit that the Tribunal failed to note that 1st petitioner ie. Mother of the deceased, also sustained grievous injuries in the same accident for that she filed a separate claim petition in M.C.O.P.No.185 of 1993 on the file of the Motor Accident Claims Tribunal, (Sub Court), Aarani by which the 1st petitioner was awarded a sum of Rs.67,000/- (Rupees Sixty Seven Thousand only) for injuries sustained by her with a compromise memo filed by both parties on 19.03.1997. i.e Between the 1st petitioner ie. Mother of the deceased and Insurance Company/2nd respondent herein. Without considering the aforesaid fact, the Tribunal dismissed the claim petition filed by the petitioners for the death of their only daughter in the same accident, is not sustainable. It is further submitted that once the Insurance company accepts the accident as the negligent of the driver whose vehicle is insured with them and paid compensation of Rs.67,000/- (Rupees Sixty Seven Thousand Only) in M.C.O.P.No.185 of 1993 for injury and taking different stand in the same accident in M.C.O.P.No.26 of 1999 stating that the vehicle is not insured with the 2nd respondent is contrary to law and on facts. Hence, the learned counsel prays this Court to set aside the award passed by the Tribunal and seeks for compensation for their daughter death in the aforesaid accident from the Insurance Company/2nd respondent herein.

5. The learned counsel for the 2nd respondent would submit that at the time of the trial, the petitioners would not submit the compromised award and decree dated 19.03.1997 passed in M.C.O.P. No.185 of 1993 on the file of the Motor

Accident Claims Tribunal, (Sub-Court), Aarani, before the Motor Accident Claims Tribunal, (Sub-Court), Cheyyar, which is stated to have settled before the Lok Adalat after preparing compromise memo between the 1st appellant and the 2nd respondent, to be considered the petitioners' claim in C.M.A. No.26 of 1999 on the file of the Motor Accident Claims Tribunal, (Sub Court), Cheyyar. As existing insurance policy insured with the 2nd respondent was not proved by the Petitioners, the Tribunal has refused the claim of the petitioners and accordingly the claim petition was dismissed by the Tribunal.

6. Heard the learned counsel appearing for both sides and perused the materials available on record.

7. Having considered the contention of counsel on either side and facts and circumstances of the case, it makes clear that both the 1st petitioner and her daughter are victims in the aforesaid accident in which her daughter died on the way while transit in the hospital. With regard to this accident, while the 1st petitioner was awarded of Rs.67,000/- in full quit before Lok Adalat for the injuries sustained in the accident, on the basis of Compromised Memo entered into between the 1st petitioner/injured and the Insurance Company/2nd respondent, the petitioners' claim was rejected for the death of her only daughter in the same accident in the absence of existing policy of the offending vehicle insured with the Insurance company/2nd respondent herein.

8. In view of the aforesaid facts and circumstances of the case, it is seen that the Court below has dismissed the claim petition on the ground of non-existence of the Insurance policy of the offending vehicle insured with the 2nd respondent. This Court is of the view that the accident has taken place in the year 1993 for which the 1st petitioner was awarded a sum of Rs.67,000/- as compensation by compromise memo between the parties in the year 1997. After two years, the petitioners have filed the claim petition in M..C.O.P. No.26 of 1999 in the year 1999 for the death of their daughter. As there is a long period of delay after receiving the award amount of Rs.67,000/-, the petitioners were not able to retrieve the evidence papers and produce the award and decree passed in favour of the 1st petitioner before the Claims Tribunal. Hence, the Claims Tribunal has dismissed the claim petition in the absence of any proof of existing insurance policy insured with the Insurance company/2nd respondent herein. From the F.I.R. registered against the driver of the offending vehicle and evidence rendered by witnesses, it is proved that the claimants' daughter died in the above accident. The said evidence was accepted by the Tribunal as proved. Since there was no policy product, the claim is rejected totally. As the accident is proved and the offending vehicle belonged to the 1st respondent insured with the 2nd respondent, the appellants are entitled for compensation due to death of their daughter in the road accident. Hence, this

Court is inclined to allow the present appeal partly, after rejecting their claim on the Loss of consortium of Rs.10,000/- and Mental shock and agony of Rs.10,000/- and allowed on other heads. Thus, the petitioners are entitled to a sum of Rs.80,000/-(Rupees Eighty Thousand only) for the death of their daughter in the accident out of which a sum of Rs.40,000/- each shall be shared by both petitioners.

9. The Insurance company/2nd respondent herein is directed to deposit the award amount of Rs.80,000/- together with interest @6% p.a. from the date of award passed by the Tribunal till the date of deposit to the credit of M.C.O.P. No.26 of 1999 on the file of the Motor Accident Claims Tribunal, Sub-Court, Cheyyar within a period of two months from the date of receipt of copy of this Judgment.

10. On such deposit, the petitioners are entitled to withdraw a sum of Rs.40,000 each by making necessary applications.

11. In the result, the Civil Miscellaneous Petition is partly allowed. The award in M.C.O.P. No.26 of 1999 passed by the Claims Tribunal is hereby set aside. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

lbm

To

The Subordinate Judge,
The Motor Accident Claims Tribunal, (Sub-Court),
Cheyyar.

Copy To :

The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.M.J. Vijayaraghavan, Advocate SR.No.11981

+1cc to Mr.C. Prabakaran, Advocate SR.No.12113

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SV (CO)

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GMR (03/05/2021)