IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2737 of 2012
and
M.P.No.1 of 2012

United India Insurance Company Limited,
No.3, Giri Ram Buildings,
Main Road,
Gopichettypalayam. .. Appellant /3rd Respondent

Vs.

1.R.Indirani
2.R.Madesh
3.R.Ramesh
4.Minor.R.Suresh
(Minor 4th respondent represented by his mother R.Indirani, 1st respondent herein)
5.K.Valliammal ..R1 to R5/Claimants
6.S.Murugesan
7.V.Kandasamy .. Respondents 6 & 7/ R1 & R2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.01.2012 made in M.C.O.P.No.439 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Bhavani.

For Appellant	:	Ms.I.Malar
For RR 1 to 5	:	Mr.M.Lokesh for Mr.Ma.P.Thangavel
For R7	:	No appearance
For R6	:	Died T/E

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 20.01.2012 made in M.C.O.P.No.439 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Bhavani.

2.The appellant is the 3rd respondent in M.C.O.P.No.439 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub

Court, Bhavani. The respondents 1 to 5 filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of one K.Rajendran, who died in the accident that took place on 26.03.2008.

3.According to respondents 1 to 5, on 26.03.2008 at about 05.00 P.M., at Moolaiveedukarar @ Rasukaran thottam, Surangal Parai, Patlur Village, while the 6th respondent was driving the tractor belonging to the 7th respondent, the 6th respondent asked one K.Rajendran to clear the rotavattor and when the deceased tried to clear the rotavattor, suddenly the 6th respondent moved the tractor with very high speed in a negligent manner and hit against the deceased and caused the accident. In the accident, the said K.Rajendran sustained multiple grievous injuries and immediately he was admitted to Anthiyur Government Hospital and thereafter referred to Government Hospital, Erode. Inspite of treatment, the said K.Rajendran died in the hospital. At the time of accident, the deceased was aged 45 years and was working as an Agriculturist and was earning a sum of Rs.10,000/- per month. Therefore, the respondents 1 to 5 filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation against the respondents 6, 7 and appellant-Insurance Company, being the driver, owner and insurer of the tractor respectively.

4.The 6th respondent-driver of the tractor remained exparte before the Tribunal.

5.The 7th respondent-owner of the tractor filed counter statement and denied various averments made by the respondents 1 to 5. According to the 7th respondent, the accident has occurred only due to negligence on the part of the deceased and the Police has registered a false case against the 6th respondent. The respondents 1 to 5 have to prove the age, avocation and income of the deceased by producing valid documents and prayed for dismissal of the claim petition as against the 7th respondent.

6.The appellant-Insurance Company, being the insurer of the tractor belonging to the 7th respondent filed counter statement and denied various averments made by the respondents 1 to 5. According to the appellant-Insurance Company, the 7th respondent-owner of the tractor failed to inform them about the accident, as per policy condition. The accident occurred in the agricultural field and it is not a public place to attract the provisions of the Motor Vehicles Act, 1988. The 7th respondent violated the policy conditions. The Appellant-Insurance Company denied that the accident occurred due to negligence on the part of the 6th respondent and the respondents 1 to 5 have to prove that the accident has occurred due to negligence on the part of the 6th respondent. The respondents 1 to 5 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 respondents 1 to 5 is highly excessive and prayed for dismissal of the appeal as against the appellant-Insurance Company.

7.The respondents 1 to 5 in reply has stated that the 6th respondent was under the control of 7th respondent and the 6th respondent is getting salary from the 7th respondent. Hence, the accident occurred only due to negligence on the part of the 6th respondent and prayed for granting compensation.

8.In the additional counter statement filed by the appellant-Insurance Company it has been stated that the injuries sustained by the deceased has not occurred by hitting of the rotavattor. The 6th respondent-driver of the tractor was employed by the deceased to do ploughing and the 6th respondent was working under the control of the deceased. Therefore, for the mistake committed by his employee, the employer namely the deceased or his legal heirs cannot ask for compensation and prayed for dismissal of the claim petition.

9.Before the Tribunal, the 1st respondent examined herself as P.W.1 and another witness was examined as P.W.2 and 7 documents were marked as Exs.P1 to P7. On behalf of the 7th respondent and appellant-Insurance Company, one V.Kalaimannan was examined as R.W.1 and no documentary evidence was let in.

10.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 tractor belonging to the 7th respondent and directed the appellant-Insurance Company, being the insurer of the tractor to pay a sum of Rs.5,55,000/- as compensation to the respondents 1 to 5.

11.Challenging the said award dated 20.01.2012 made in M.C.O.P.No.439 of 2008, the appellant-Insurance Company has come out with the present appeal.

12.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in awarding compensation when there is no evidence to prove that accident has occurred due to negligence on the part of the driver of the tractor. The accident had occurred only due to negligence on the part of the deceased himself. The accident has occurred in a private land belonging to deceased and not in a public place. Hence, the award of the Tribunal is unsustainable and appellant is not liable to pay compensation. The Insurance Company is liable to pay compensation only when the accident occurred in a public place. The Tribunal failed to see that claim petition is maintainable only under Workmen Compensation Act, as the driver of the tractor, 6th respondent herein was an employee of 7th respondent. The Tribunal fixed monthly income of the deceased at Rs.4,500/- per month without any basis and prayed for setting aside the award passed by the Tribunal.

13.Learned counsel appearing for the respondents 1 to 5 made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

14.Though notice has been served on the 7th respondent and his name is printed in the cause list, there is no representation on behalf of him, either in person or through counsel.

15.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the respondents 1 to 5 and perused the entire materials on record.

16.The issues to be decided in the Civil Miscellaneous Appeal is:

(i)What is a public place as per Motor Vehicles Act and whether the accident in the present case has occurred in a public place.

(ii)Whether appellant is liable to pay compensation.

17.It is the contention of the respondents 1 to 5 that 6th respondent instructed the deceased to clean the rotavattor and while the deceased was cleaning, the 6th respondent, driver of the tractor drove the tractor in a high speed in a negligent manner and hit the deceased and caused the accident. Due to the injuries sustained, he died inspite of medical treatment. To substantiate this contention, the 1st respondent examined herself as P.W.1 and deposed to that effect and marked Ex.P1/F.I.R., which was registered against the driver of the tractor, the 6th respondent herein. It is the contention of the appellant-Insurance Company that accident has occurred due to negligence on the part of the deceased and not due to rash and negligent driving by the 6th respondent. Further, the appellant-Insurance Company has contended that the 6th respondent was employed by the deceased to do work in his agricultural land and for the negligence of his employee, the legal heirs of the deceased are not entitled to claim compensation from the appellant-Insurance Company. The appellant-Insurance Company has not examined either the 6th respondent, driver of the tractor or the 7th respondent, owner of the tractor to substantiate their contention. They also not examined any eyewitness to substantiate their contention. The Tribunal considering the evidence of 1st respondent as P.W.1 and F.I.R., which is registered against the 6th respondent, driver of the tractor and in the absence of any contra evidence, held that accident has occurred due to rash and negligent driving by the driver of the tractor. The said finding of the Tribunal is valid.

18.As far as the contention of the learned counsel appearing for the appellant-Insurance Company that deceased employed by the 6th respondent and was an employee of 6th respondent is without merits and admittedly the tractor belongs to 7th respondent and 6th respondent is working as driver of the tractor under the 7th respondent. The deceased has engaged tractor from the 7th respondent and 6th respondent employee of 7th respondent was driving the tractor at the time of accident. In view of the same, the appellant-Insurance Company as insurer of the tractor is liable to pay compensation.

19.As far as the contention of the learned counsel appearing for the appellant-Insurance Company that accident has occurred in a private land and not in a public place and therefore the appellant-Insurance Company is not liable to pay compensation is without merits. A public place is defined in Section 2(34) of Motor Vehicles Act, 1988, wherein it has been mentioned as follows:

> “2(34) 'Public place' means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage”

20.It is the contention of the appellant-Insurance Company before the Tribunal that the alleged accident has occurred in a private place and therefore, the appellant-Insurance Company is not liable to pay the compensation. The learned counsel appearing for the appellant-Insurance Company contended before this Court that the liability of the Insurance Company will arise only when the vehicle belonging to the insured involved in the accident in a public place and IIIrd party like 1st respondent is injured in the said accident.

21.In Motor Vehicles Act, public place is defined in Section 2(34) and in the Old Act in Section 2(24). Section 2(34) reads as follows:

> "2(34) 'Public place' means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage."

22.A Full Bench of Bombay High Court considered the issue of public place as per Section 2(24) of Old Act and referring to judgment of a Division Bench of this Court reported in 1982 ACJ Supplementary 203 Madras, held that a public place is defined in Motor Vehicles Act is a place, where members of public have an access. The emphasis placed by the Full Bench is on the words 'access of public to a place'. The Full Bench of this Court and two Division Benches of this Court considered the issue of public place and in all the three judgments, it has been held that when the public have access to a place by a right or by permission and even without permission is a public place.

23.The relevant portion of three judgments are extracted hereunder:

(i)A Full Bench judgment of this Court reported in 1999 ACJ 1520 Full Bench Judgment (United India Insurance Co.Ltd., Vs. Parvathi Devi and others), wherein this Court at paragraph Nos.16 & 17, held as follows:

> "...16. The definition of 'public place' is very wide. A perusal of the same reveals that the public at large has a right to access though that right is regulated or restricted. It is also seen that this Act is beneficial legislation, so also the law of interpretation has to be construed in the benefit of public. In the overall legal position and the fact that if the language is simple and unambiguous, it has to be construed in the benefit of the public, we are of the view that the word 'public 'place', wherever used as a right or controlled in any manner whatsoever, would attract Section 2 (24) of the Act. In view of this, as stated, the private place used with permission or without permission would amount to be a 'public place'.

17. In view of what we have discussed above, we hold that the expression 'public place' for the purpose of Chapter VIII of the Motor Vehicles Act, 1939 will cover all places including those of private ownership where members of the public have an access whether free or controlled in any manner whatsoever.”

(ii)A Division Bench judgment of this Court reported in 2000 (I) CTC 145 (G.Bhuvaneswari and 3 others Vs. M.Sornakumar and 2 others), wherein this Court at paragraph Nos.5 & 6, held as follows:

“...5.Section 2(24) of the Act defines 'Public Place' as a road, street, way or other places whether a thoroughfare or not, to which the public have a right of access and includes any stand at which passengers are picked up or set down by a stage carriage. In the above decision a full Bench of this Court has held that the definition of public place is very wide. A perusal of the same reveals that of the public at large has a right to access though that right is regulated or restricted as the definition under the Act uses the expression 'right of access' what, is significant is that under the present definition even a place the right to use of which is restricted is a public place.

6. In the instant case, the accident had happened in the factory premises. The place is accessible to the members of the public and available for the use of public, who have dealings ... Following the decision of the Full Bench of this Court, we are of the view that the place where the occurrence had happened is a public place and the second respondent Insurance Company is liable to pay the compensation as per the provisions of the Act.”

(iii)A Division Bench judgment of this Court reported in 2004 (5) CTC 485 (National Insurance Company Limited, Branch Office, 88 F, Bye Pass Road, Dharmapuri - 636 701 Vs. Chitra and others), wherein this Court at paragraph Nos.6 & 7, held as follows:

> "...6. There is no dispute that in the above referred Division Bench decision, placing reliance on the decision of the Full Bench reported in 1999 T.N.L.J. 144 (UNITED INDIA INSURANCE CO. LTD. VS. PARVATHI DEVI AND OTHERS), the Division Bench has held that public place includes where public have an access whether free or controlled in any manner.
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> 7. In the light of the law laid down by the Full Bench having been followed by the earlier Division Bench referred to above, the only objection raised by the learned counsel for the appellant Insurance company cannot be sustained. Though the appellant has questioned the quantum of compensation arrived at by the Tribunal in the memo of grounds of appeal, learned counsel appearing for the appellant is not serious in disputing the same before this Court."

24.A Division Bench of Kerala High Court considered the issue of public place recently. In the judgment reported in 2019 1 TNMAC 76 (DB) (Ker.) [Hasna S.K. Vs. S.K.Haridas and others] the Division Bench of Kerala High Court held that Court yard of a house inside a compound wall is a public place as driver of the van while taking the van to reach public road, the accident has occurred and held that Insurance Company is liable to pay compensation. Similarly a judgment of the High Court of Gujarat reported in 2019 1 TNMAC 645 (Guj.) [Asgarali Hasanali (since decd.) through Heirs and others Vs. Shamji Nanji Solanki (deleted) and others], the Gujarat High Court held that Oil Mill is a public place as loadman had access to the Oil Mill to load oil in the vehicle. When the accident had occurred inside the compound wall of the Oil Mill and the loadman was involved in the accident, the Gujarat High Court has held that accident has taken place in a public place. In all these judgments, Courts have considered the definition of public place as per Section 2

(24) of the Old Act and Section 2(34) of the present Act and held that when the public had access to a place either by right or by permission or without permission, the said place is a public place.

25.In the present case, the 6th respondent has entered the agricultural land of the deceased to plough the said land. When the 6th respondent had access to the agricultural land of the deceased with his permission that land has become public place as per the ratio in the judgments referred to above. In view of the same, the contention of the learned counsel appearing for the appellant-Insurance Company is without merits. The issues are decided that the agricultural land of the deceased is a public place as per Motor Vehicles Act and accident has occurred in a public place and appellant-Insurance Company is liable to pay compensation.

26.As far as quantum of compensation is concerned, the respondents 1 to 5 have claimed that the deceased was aged 45 years and was working as an Agriculturist and earning a sum of Rs.10,000/- per month. But, they failed to prove the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal has fixed a sum of Rs.4,500/- per month as notional income of the deceased, which is excessive. The deceased was aged 45 years and the Tribunal has not granted any enhancement towards future prospects of the deceased. Therefore, the amounts awarded by the Tribunal under different heads are not excessive warranting interference by this Court.

27.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.5,55,000/- awarded by the Tribunal as compensation to the respondents 1 to 5, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.439 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Bhavani. On such deposit, the respondents 1 to 3 and 5 are permitted to withdraw their respective share of the award amount, as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 4th respondent is directed to be deposited in any one of the Nationalized Banks, till the minor 4th respondent attains majority. On such deposit, the 1st respondent, mother of the minor 4th respondent is permitted to withdraw the accrued interest once in three months for the welfare of minor 4th respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Bhavani.

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

spd(co)
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