IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3714 OF 2012
AND
M.P.NO.1 OF 2012

The Branch Manager,
The New India Assurance Company Ltd,
Tiruvannamalai. .. Appellant/2nd Respondent

Vs.

1.Arputham
2.Anbarasi
3.Minor Abishek
(Minor 3rd Respondent represented by his guardian, next friend 2nd Respondent)
... Respondents 1 to 3/ Claimants 1 to 3

4.Abdul Sathar ..4th Respondents/1st Respondent

Prayer:
This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.10.2011 made in M.C.O.P.No.506 of 2010 on the file of the Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

For Appellant : Mr.K.Vinod for Ms.Elveera Ravindran

For RR1 to 3 : Ms.C.Mahadevi for M/s.Pass Associates

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 11.10.2011 made in M.C.O.P.No.506 of 2010 on the file of the Motor Accident Claims Tribunal, District Court, Tiruvannamalai.

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2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.506 of 2010 on the file of the Motor Accident Claims Tribunal, District Court, Tiruvannamalai. The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of one Anandhan, who died in the accident that took place on 12.09.2007 against 4th respondent and appellant.

3.According to the respondents 1 to 3, on the date of accident i.e., on 12.09.2007, the deceased Anandhan travelled as a cleaner in the 4th respondent's van bearing Registration No.TN 25 C 1078. The said van was proceeding to Nolambai village, for attending the marriage and near Gangasoodaimani, the driver of the 4th respondent drove the vehicle in a rash and negligent manner. Due to the which, the deceased Anandhan fell down, and sustained grievous injuries on his backside of the head, and on his left side hip. Immediately, he was taken to hospital and died inspite of treatment. The 4th respondent is the owner of the lorry and the appellant is the insurer of the said Vehicle. Therefore, the respondents 1 to 3 have filed the above claim petition claiming compensation against the 4th Respondent and the appellant.

4.The 4th respondent filed counter statement denying the averments made by the respondents 1 to 3 and contended that the deceased Anandhan travelled as a cleaner in the offending vehicle. It is further contended that the 4th respondent has insured the vehicle with the appellant and the period of the Insurance Policy is from 20.05.2007 to 19.05.2008. On the date of accident there was valid insurance coverage for the vehicle. The 4th respondent has paid the separate premium for two workers. Therefore, the 4th respondent is not liable to pay any compensation to the respondents 1 to 3 and compensation if any is liable to be paid by the appellant/Insurance Company.

5.The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 to 3 and contended that the respondents 1 to 4 have to prove that RC, Permit and Policy of the accused vehicle were in force on the date of the accident. The driver of the vehicle did not possess valid driving license on the date of the accident. It is further contended that the deceased Anandhan was travelling in the van only as an unauthorised passenger at the time of accident. The offending vehicle is a goods carrying commercial vehicle and the policy does not cover the passengers. The accident has occurred due to negligent act of the deceased and therefore the appellant is not liable to pay any compensation to the respondents 1 to 3.

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6.Before the Tribunal, the 1st respondent, mother of the deceased, examined herself as P.W.1 and one Rajkumar/eyewitness was examined as P.W.2 and marked four documents as Exs.P1 to P4. On the side of the appellant, one Saravanan/Development Officer of the Insurance Company, was examined as R.W.1 and marked four documents as Exs.R1 to R4.

7.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 van belonging to the 4th respondent and directed the 4th respondent and appellant/ Insurance Company, being the insurer of the said vehicle to pay a sum of Rs.4,83,000/- as compensation to the respondents 1 to 3.

8.Against the said award dated 11.10.2011 made in M.C.O.P.No.506 of 2010, granting compensation to the respondents 1 to 3, the appellant/Insurance Company has come out with the present appeal.

9.Though the learned counsel appearing for the appellant/ Insurance Company raised various grounds in the grounds of appeal with regard to quantum of compensation, when the matter is taken up for hearing, he has restricted his arguments only with regard to liability.

10.The learned counsel appearing for the appellant/ Insurance Company contended that the deceased had travelled as an unauthorised passenger and the Tribunal has erroneously fixed liability on the appellant. The deceased did not travel as a cleaner in the offending goods vehicle. The deceased and others travelled in the goods vehicle at the time of accident to attend the marriage function. The Tribunal failed to see that in the FIR it has been stated that the deceased and others are marriage party and while going to attend the marriage the accident occurred. The 4th respondent, who is the owner of the vehicle, has stated that the deceased was a cleaner and travelled as a cleaner only to wriggle out of his liability to pay compensation and defraud the Courts. The Tribunal failed to see that the appellant has discharged its duty and absolved itself of the liability and the appellant is not liable to pay any compensation to the respondents 1 to 3 and prayed for setting aside the award of the Tribunal.

11.Per contra, learned counsel appearing for the respondents made her submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel

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appearing for the respondents 1 to 3 and perused all the materials available on record.

13.It is the contention of the respondents 1 to 3 that the deceased was working as a cleaner under 4th respondent/owner of the vehicle. On the date of accident, the deceased travelled as a cleaner in the vehicle. To substantiate the said contention, they examined PW2/eyewitness who travelled in the vehicle at the time of accident. PW2 deposed that the deceased was cleaner and travelling in the cabin of the vehicle at the time of accident. In the cross examination, he denied the suggestion that the deceased was not a cleaner. The 4th respondent/owner of the vehicle in the counter statement has stated that the deceased was a cleaner and he travelled only as a cleaner in the vehicle at the time of accident. It is the contention of the appellant that the deceased was an unauthorised passenger and travelled as part of the marriage party. The appellant relied on the contents of the FIR and the evidence of PW1. To substantiate their contention, they examined RW1, Ex.R1 and Ex.R2. It is well settled that contents of FIR and judgment in the criminal court are not binding on the Tribunal. The Tribunal has to decide the issue based on evidence let in before it. In the present case, PW2 has categorically stated that the deceased travelled as cleaner in the vehicle at the time of accident. This statement was confirmed by the 4th respondent in the counter statement who is the owner of the vehicle. RW1/official of the appellant has admitted that the owner has paid premium for driver and the cleaner apart from third party liability. The appellant has not examined investigator who prepared Ex.R1. The appellant has not let in any evidence to disprove the statement of the 4th respondent as well as the evidence of PW2 to show that the deceased was employed somewhere and not as a cleaner under the 4th respondent. The Tribunal considering the evidence of PW2, Ex.R1 and Ex.R2 and statement of the 4th respondent in the counter statement held that the deceased travelled as cleaner and not as unauthorized passenger. RW1 admitted that Ex.R2/copy of Insurance Policy covers the risk of third party. In view of the same, the appellant is liable to pay compensation to the respondents 1 to 3. There is no error in the award of the Tribunal warranting interference by this Court.

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14.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.4,83,000/- awarded by the Tribunal as compensation to the respondents 1 to 3, along with interest and costs is confirmed. The appellant/Insurance Company and 4th respondent are 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. On such deposit, the respondents 1 & 2 are

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permitted to withdraw their respective share of the award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. The share of the minor 3rd respondent is directed to be deposited in any one of the Nationalised Bank till he attains majority. The 2nd respondent being the mother of the 3rd respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The District Judge,
   The Motor Accident Claims Tribunal,
   Tiruvannamalai.

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

+1cc to M/s.Pass Associates, Advocate, S.R.No.23179

C.M.A.No.3714 of 2012
and
M.P.No.1 of 2012

VBA(CO)
CS/05/11/2020

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