

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.10.2020

PRONOUNCED ON : 03.11.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.574 of 2012
and M.P.No.1 of 2012

(Through Video Conferencing)

The New India Assurance Co.,Ltd.,
No.45, Moore Street,
Chennai-1. Appellant/2nd Respondent

Vs.

1.B.ChinnaduraiRespondent/Petitioner
2.V.BalakrishnanRespondent/1st Respondent
3.Tamil Nadu State Transport Corporation
Limited, represented by its
Managing Director
(Amended as per order in M.P.No.4566/09
dated 23.10.2009) 3rd Respondent/3rd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988 against the judgment and decree in
M.C.O.P.No.2382 of 2005, dated 23.09.2010, on the file of the
Motor Accidents Claims Tribunal, (VI Court of Small Causes)
Chennai.

For Appellant : Mrs.Elveera Ravindran

For R1 : M/s.M.Malar

For R3 : Mr. K.Murthy

J U D G M E N T

The Insurance Company is the appellant in this appeal. In
this appeal, the appellant-Insurance Company has questioned the
liability fastened on its vide the impugned Judgment and decree
dated 23.09.2010 passed by the Motor Accident Claims Tribunal
(VI Small Causes Court) Chennai in M.C.O.P.No.2382/2005.

2. By the impugned Judgment and Decree, the Tribunal has computed a compensation of Rs.3,03,000/- directing the appellant-Insurance Company and the 3rd respondent-Tamil Nadu State Transport Corporation to pay equally 50% of compensation on account of contributory negligence on the part of the drivers of the insured van and the 3rd respondent TNSTC bus involved in the accident.

3. The aforesaid compensation was awarded to the 1st respondent/claimant viz., B.Chinnadurai as the legal representative of the deceased Vishalakshi together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit.

4. As per the claim petition, the deceased Vishalakshi met with an accident on 19.05.2004 at about 14.45 hrs. when she was travelling in the insured van bearing Reg.No.TN 07-U-6616, belonging to the 2nd respondent insured with the appellant met with an accident and with the TNSTC Bus belonging to the 3rd respondent State Transport Corporation bearing Reg.No.TN 32 N 1975. Due to the injuries suffered, the said Visalakshi succumbed to injuries and later died in the hospital.

5. The break up of the amount awarded by the Lower Court are summarised below:-

For loss of income Rs.4,500/- x 12 - 1/3 x 8	Rs.2,88,000/-
Loss of love and affection	Rs. 5,000/-
Funeral Expenses	Rs. 10,000/-
Total	Rs.3,03,000/-

6. Aggrieved by the said impugned order, the appellant-Insurance Company has preferred this appeal.

7. The case of the appellant-Insurance Company is that the Tribunal erred in relying on the unregistered Will-Ex.P.32 and evidence of P.W.10 who deposed that the claimant B.Chinnadurai was the legal representative of the deceased and the Tribunal ought not have awarded the compensation to the 1st respondent-claimant based on an unregistered Will which was neither probated nor any letters of administration was obtained .

8. On behalf of the 3rd respondent-State Transport Corporation, learned counsel for the 3rd respondent was submitted that the liability fastened on it was not sustainable:-

(a) That the 1st respondent was not a legal representative of the deceased for the purpose of section 166 of the Motor Vehicles Act, 1988;

(b) The Tribunal erred in relying on an unregistered will vide Ex.P.32 to consider the 1st respondent as the legal representative of the deceased;

(d) The Tribunal erred relying on the deposition of PW2, the alleged attester of the Ex.P.32 to come to the above conclusion: and

(e) The tribunal erred in concluding that that drivers of the insured van in which the deceased was travelling and the bus of the 3rd respondent State transport Corporation were equally responsible for the accident.

9. Though, the deceased was entitled to adopt any person as her son or daughter, it is evident that from reading of the so-called "Will", the 1st respondent purportedly treated as the 1st respondent her adopted son who is said to be her nephew. In Ex.P.32 unregistered "Will" PW.10 attester of the Will was the Administrator appointed by the deceased Visalakshi.

10. The learned counsel for the appellant-Insurance Company has relied on the decision of the Division Bench of this Court reported in Ganesan vs. P.Sundram, 2011 (2) CTC 435. A specific reference was made to para -18 which reads as under:

18. Now in the case on hand, the question is as to whether the unprobated Will is sought to be proved by the Respondents for collateral purpose as it is claimed by them. The learned Counsel for the Respondents would submit that no right or title is attempted to be established under the Will so as to fall within the bar contained in Section 213 of the Act, instead, according to him, the document is used only to prove that the

earlier Will for which Letters of Administration is sought for has been subsequently canceled. This according to the learned Counsel for the Respondents is a collateral purpose. But, we find it too difficult to accept the said contention. The said Will of the year 1993 is sought to be used to defeat the claim of the Appellants to get Letters of Administration on the earlier Will. Unless, the due execution and contents of the said Will by which the earlier Will is stated to have been cancelled are proved, the Respondents cannot succeed in their plea to defeat the claim of the Appellants for Letters of Administration. The contents of the said Will of the year 1993 can be proved only in an appropriate Probate proceeding. Unless the said Will of the year 1993 is proved that it is the last Will of the deceased and it satisfies all the other legal requirements, the earlier Will for which Letters of Administration proceeding has been initiated cannot be negatived. Proof of the same cannot be made in the present Suit because the same could be done if only the Respondents approach the Court for probating the said Will either by making a counter claim or by initiating separate proceedings. For the Respondents, the right to oppose the issuance of probate in respect of the earlier Will itself is derived only from the unprobated subsequent Will. As held by the Full Bench of this Court in Ganshmdoss v. Gulab Bi Bai, AIR 1927 Mad. 1054, the bar contained in Section 213 of the Indian Succession Act is applicable even to a Defendant in a Suit. Therefore, we are of the firm view that the purpose for which the Will of the year 1993 is sought to be proved by the Respondents in evidence is only for the main purpose to establish that the said Will is the last Will which cancels the earlier Will and the said purpose is not merely collateral as it is sought to be made out by the Respondents. Apart from that, in Commissioner v. Mohan Krishan Abrol, 2004 (4) CTC 35 (SC), the Hon'ble Supreme Court has held that even for such collateral purposes the unprobated Will cannot be used in a Probate proceedings.

11. The learned counsel for the 3rd respondent -TNSTC relied on the decision reported in 2011 ACJ 737 and 2014 (1) CTC 886.

12. I have considered the arguments advanced by the learned counsel for the appellant insurance company, 1st respondent claimant and the 3rd respondent State transport Corporation.

13. The 1st respondent is the nephew of the deceased Vishalakshi. The deceased who was aged about 56 years and was working as a cleaner in IIT, Chennai and was drawing a monthly salary of Rs.10,000/-. On behalf of the appellant-Insurance Company, it was contended that the Tribunal ought to have considered the evidence on record and fixed the liability on the 3rd respondent-TNSTC and not on the appellant-Insurance Company.

14. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving of the driver of the van belonging to the 2nd respondent and the driver of the bus of the 3rd respondent-State Transport Corporation has apportioned 50% contributory negligence on the part of the driver of both vehicles and directed the appellant-Insurance Company, being the insurer of the van and 3rd respondent TNSTC to pay a sum of Rs.1,01,500/- each towards compensation to the 1st respondent-claimant.

15. The 3rd respondent State Transport Corporation has not filed a separate appeal against the impugned judgment and decree nor has the 1st respondent. Therefore, it cannot oppose the Impugned Judgment and decree. Therefore, the dispute in the present appeal is to be resolved in the light of the submissions of the appellant and the 1st respondent claimant.

16. Before the Tribunal, Ex.P.32-Unregistered Will dated 29.08.2000 was marked to substantiate the claim that the first respondent-claimant viz. B.Chinnadurai was the adopted son of the deceased Vishalakshi. PW.10 is the attester of Ex.P.32 unregistered "Will". Ordinarily, the 1st respondent ought to have probated Ex.P.32 Will. Therefore, in absence of a probation, it cannot be straight away relied to conclude that 1st respondent was the adopted son of the deceased. It cannot be said that the contents of the will have to be straight away accepted as the truth regarding the status of the 1st respondent as the adopted son of the deceased in absence of collateral evidence is questionable.

17. Considering the fact that the deceased did not possess any immovable property or any other movable assets even as per Ex.P.32 unregistered will, the necessity of executing the aforesaid will and appointing P.W.10 as an administrator to administer aforesaid unregistered Will reflects ingenuity of the 1st respondent.

18. If the deceased Visalakshi really intended to pass on her service benefits to the 1st respondent she was merely required to nominate the 1st respondent-claimant as the beneficiary during her life time in her service records with her employer.

19. If she had such intentions to pass on the benefits to the 1st respondent, there would be records to substantiate the same. The learned counsel for the 1st respondent was directed to produce any records to show the intention of the decision.

20. The learned counsel for the first respondent-claimant has filed photo copies of two cheques drawn in favour of the 1st respondent for a sum of Rs.75,165 and Rs.87,775.30 drawn on the State Bank of India by the Chairman, Hotel Management, Indian Institute of Technology, Chennai. She was also filed extract from the Pass Book Accounts of the 1st respondent evidencing crediting of the aforesaid amount in his favour.

21. The learned counsel also filed a copy of Form DA-1 signed by the deceased Visalakshi on 24.08.2020 nominating the first respondent as her beneficiary in the event of her death. Thus, it stands concluded that the 1st respondent- claimant was her legal representative though really speaking not her dependent. At the same time, there is a death due to the accident which warrants compensation under the provisions of the Motor Vehicles Act.

22. Therefore, I do not find any merits in this present appeal filed by the appellant-Insurance Company as the 1st respondent-claimant is a legal representative within the meaning of Section 166 of the Motor Vehicles Act, 1988.

23. The appellant-Insurance Company and the 3rd respondent are therefore directed to deposit the compensation awarded by the Tribunal together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit and cost as was directed by the Tribunal in the impugned Judgment and Decree, less any amount already deposited by them within a period of six weeks from the date of receipt of a copy of this Judgment.

24. On such deposit, the claimant-respondent No.1 is permitted to withdraw the compensation awarded together with interest and cost as was ordered by the Tribunal, less any amount already withdrawn, by filing suitable application before the Tribunal.

25. In the light of the above, this civil miscellaneous appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kkd
To:-

The Motor Accidents Claims Tribunal,
(VI Court of Small Causes)
Chennai.

+1cc to M/s.M.Malar, Advocate Sr.35589
+1cc to M/s.Elveera Ravindran, Advocate Sr.35441

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