

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.02.2020
C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.731 of 2013
and
M.P. No.1 of 2013

M/s. National Insurance Co. Ltd.
No.756, Anna Salai,
Chennai-600 002

..Appellant/2nd Respondent

Versus

1.Thiru. P. Balasundara Pandian ..1st Respondent/ Petitioner
2.Thiru. K. Chitra ..2nd Respondent/ Respondent
(R2 is reported as died)

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 25.02.2011 made in M.C.O.P.No.1261 of 2004 on the file of the Motor Accident Claims Tribunal, (Small Causes Court IV Judge), Chennai.

For Appellant : Mr.J. Chandran
For Respondent1 : Mrs.V. Nalini
For Respondent2 : Dismissed vide
order dated 09.09.2015

J U D G M E N T

The Insurance Company has filed this appeal against the Judgment and order made in M.C.O.P. No.1261 of 2004 dated 25.02.2011 on the file of the Motor Accident Claims Tribunal, (Small Causes Court IV Judge) Chennai questioning the liability on it.

2. The Facts of the case briefly are as follows:

On 14.05.2003, while the claimant/1st respondent herein was traveling in a Van bearing registration No.TMK 6651, the driver of the van drove the offending vehicle in a rash and negligent manner and dashed against the stationed bus. Due to which, the claimant sustained grievous injuries and was admitted in the hospital for treatment. In view of the injuries in the accident, the claimant filed claim petition in M.C.O.P. No.1261 of 2004 before the Tribunal for compensation of Rs.4,00,000/- (Rupees Four Lakhs Only). The Tribunal has awarded a sum of Rs.1,10,000/- (Rupees One Lakh and Ten Thousand Only) to the claimant as compensation.

3. Being aggrieved by the award passed by the Tribunal, the appellant/Insurance Company has filed the appeal questioning the liability on its side.

4. The learned counsel for the appellant would submit that the Tribunal has erroneously passed award of compensation without considering that the 1st respondent was travelling in offending vehicle as unauthorized passenger even the vehicle was issued with a goods carriage permit and R.W1 and R.W.2 also deposed about no insurance, no premium covering the risk of any passenger. Hence, the 2nd respondent ie. Owner of the vehicle, alone liable to pay compensation to the claimant. Such being the factum, in the absence of any oral and documentary evidence, the tribunal has held that the claimant travelled along with goods as owner of the goods. Hence, the Insurance Company has no liability to pay compensation to the appellants herein and seeks to set aside the award passed by the Tribunal.

5. Per contra, the learned counsel for the respondent-1 would submit that the Tribunal only after corroborating evidence of the 1st respondent/P.W.1 coupled with the copy of F.I.R./Ex.P6 held that 1st respondent was travelling as owner of the goods in the offending vehicle and after considering the entire oral and documentary evidence has awarded the compensation. Hence, the appeal filed by the Insurance company is unsustainable and liable to be quashed.

6. Heard both sides and perused the available materials on records.

7. The factum of the accident and the manner of the accident being rash and negligence driving of the driver of the offending vehicle under Section 163A are not in dispute. The entitlement of claimant for compensation as the offending vehicle was permitted for goods carriage not for carrying passengers and the claimant was traveling as unauthorized passenger in the goods carriage vehicle, is alone disputed.

8. During the trial, the P.W.1 & P.W.2 were examined and Ex.P1 to Ex.P11 were marked on behalf of the Claimant. On the part of the Insurance Company, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R3 were marked. C.W.1 was examined and Ex.C1 was marked on behalf of Court side.

9. On perusal of the award, it is seen that during the time of the trial, it was confirmed that the owner of the vehicle/2nd respondent herein along with family committed suicide and dead. vide Ex.R2 and Ex.R3. However, on the date of accident the owner of the offending vehicle/2nd respondent herein was alive and the offending vehicle had valid insurance policy. Hence, the

Tribunal has confirmed after considering the evidence of P.W.1 along with Ex.P6 that the 1st respondent has traveled along with goods in the offending vehicle as owner of the goods, vide P.W1 oral evidence and Ex.P6 F.I.R which was lodged one Mr. Iyyappan. Further, the owner of the vehicle was not examined to prove on the side of the Insurance company. After relying on the oral and documentary evidence of P.W.1 and Ex.P.6 and in the absence of any evidence from the owner of the vehicle and the owner of the vehicle committed suicide along with family as well as the insurance policy of the offending vehicle was in existence at the time of accident, the Tribunal has established that the 1st respondent/claimant was traveling as owner of the goods in the offending vehicle in support of the claimant/1st respondent herein.

10. In view of the aforesaid observation and having considered the facts and circumstances of the case, this Court confirms the findings of the Tribunal beyond any reasonable doubt. Hence, the learned counsel for the appellant's contention is not sustainable and the appeal is liable to be set aside.

11. The Insurance company is directed to deposit the award amount along with interest as passed by the Tribunal within a period of four weeks from the date of receipt of copy of this Judgment. On such deposit, the Claimant/respondent1 is permitted to withdraw the award amount after filing a formal petition.

12. In the result, the appeal is dismissed. Accordingly, the impugned award passed by the Tribunal is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

lbm
To:

1.The Motor Accident Claims Tribunal,
(Small Causes Court IV Judge), Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.
+1cc to Mr.J.Chandran, Advocate SR.No. 9135

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A.SK(19.04.2021)