

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2020

PRONOUNCED ON : 11.09.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

**Civil Miscellaneous Appeal No.2812 of 2016 and
C.M.P.No.20403 of 2016**
(Heard through video conferencing)

The Divisional Manager,
The Oriental Insurance Co. Ltd.,
Vijalakshmi Complex,
1st Phase, No.32/312, 13th Street,
2nd Floor, Sathuvachari,
Vellore – 632 009.

Appellant

Vs

1.Karthika

2.S.G.Annapurnamma (Lorry Owner)

3.Smt. Gowri

4.Baggiyaraj

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment passed in M.C.O.P.No.201 of 2014 dated 10.06.2016 on the file of the Motor Accident

Claims Tribunal (Special Motor Accident Claims Tribunal), at Thiruvannamalai District.

For Appellant :Mr.J.Chandran

For Respondents : No Appearance

JUDGMENT

This appeal is filed by the Insurance Company aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal (Special Motor Accident Claims Tribunal), at Thiruvannamalai.

2.The facts, relevant to decide this appeal, are as under:-

On 07.07.2013, at Kunigal by pass, NH 75 high ways, near Chetihalli gate, Tumkur District, Karnataka, a lorry bearing registration No.KA 13A 299 was stationed due to right side rear tyre deflation. While the Cleaner and Driver of that Lorry were changing the deflated tyre, a Tanker Lorry bearing registration No.KA 04 A 7207 driving from Hasan towards Bangalore, without noticing the stationed Lorry, ramp on its back. The Driver of the Tanker Lorry bearing registration

No.KA 04 A 7207 and Cleaner sustained severe injuries. They were taken to Kunigal Government Hospital. The Cleaner by name Balaji died in the hospital. Muniappa – Driver of the Lorry survived with injuries.

3.A claim petition was filed by one Karthika claiming herself as the wife of the deceased Balaji against the owner of the Tanker Lorry bearing registration No.KA 04 A 7207 and its Insurer. The mother and brother of the deceased Balaji were arrayed as respondents 3 and 4 respectively in the said claim petition. A sum of Rs.20 lakhs was sought as compensation.

4.According to the claimant - Karthika, the accident victim – Balaji was 25 years old at the time of accident and he was hale and healthy man and was working as Lorry Driver and Two Wheeler Mechanic, earning not less than Rs.15,000/- per month. Due to his sudden death, the claimant lost her future. Alleging that the accident occurred due to the rash and negligent driving of the Tanker Lorry Driver which hit the stationed Lorry without noticing it, claimed the owner of the Tanker Lorry and its Insurer liable to pay the compensation.

5.The Insurance Company filed counter before the Tribunal denying the accident and the liability. The Insurance Company stated that it is the duty of the claimant to prove the Insurance of the Tanker Lorry and Driving Licence of the Driver of the Tanker Lorry. The Insurance Company has further stated that the accident occurred due to the carelessness of the Driver of the stationed lorry who failed to place proper indication, light and signal for the vehicles passing through. Without impleading the owner and the Insurer of the stationed lorry bearing registration No.KA 13 A 299, for non joinder of necessary parties, the petition is liable to be dismissed. It was also contended by the Insurance Company that the claimant has to prove that she is the legal representative of the deceased Balaji and Balaji was professional Driver having licence to drive the vehicle and also should prove that he was also a Two Wheeler Mechanic. It is also averred in the counter that the mother and brother of the deceased Balaji have filed another claim petition in M.C.O.P.No. 296 of 2014 on the file of the Subordinate Court (Special Judge), Tiruvannamalai and the same is pending.

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6.Before the Tribunal, the claimant was examined as P.W.1 and one Murugan was examined as P.W.2. Five exhibits were marked on the side of the

claimant. On the side of the respondents in the claim petition, no witness was examined and no document was produced. After considering the materials available, the Tribunal awarded Rs.14,36,000/- as compensation to the claimant and the respondents 3 and 4.

7. Aggrieved by the said award, present appeal has been preferred by the Insurance Company in the year 2016. During admission, notice was ordered to the respondents. Except the second respondent, the Lorry owner, for others, notice could not be served. Notices were returned either with the endorsement 'left' or 'unclaimed'. Pending appeal, the matter was referred to Maha Lok Adalat. The matter was returned back to the Court with an endorsement that in spite of four adjournments, the respondents failed to turn up. This indicates that the claimant and the respondents 3 and 4 who are the beneficiaries of the award are not available in the addresses given.

8. On scrutinising the records, this Court finds that the photographs and thumb impressions of the claimant was not obtained by the Tribunal while numbering the claim petition. The five documents marked are Ex.P.1, Kannada

version of F.I.R., Ex.P.5, is its Tamil translation. Ex.P.2 is the Motor Vehicle Inspector report in respect of both the vehicles. Ex.P.2 indicates the rear bumper right corner platform body, tail lamp, grill, right tail lamp of the stationed lorry found damaged. The front chasis, left side tank and platform body cabin of the Tanker Lorry were found damaged. Ex.P.3 is the post mortem report of Balaji. Ex.P.4 is the marriage invitation of the claimant with the deceased. The exhibit indicate that the claimant - Karthika married Balaji on 23.01.2013. P.W.2 - Murugan who claims to be the eye witness to the accident occurred in Tumkur District, Karnataka State is actually a resident of Kuruvimalai, Tiruvannamalai District. From Ex.P.4, this Court finds that Murugan is closely related to the claimant since, his name is shown as one of the invitee for the claimant's marriage with the deceased Balaji.

9.This Court is constrained to remand the matter back to the Tribunal for proper appreciation of the evidence regarding the following aspects which are not available as of now :-

“(i)Whether the claimant and the respondents 3 and 4 are the dependants of the decased Balaji ?;

(ii)Whether the avernment made by the 2nd respondent/Insurance Company in its counter that M.C.O.P.No.296 of 2014 filed on the file of the Subordinate Court, Tiruvannamalai by T.Gowri and her son Baggiyaraj is true and if so, the status of the said case ?;

(iii)Whether any other claim petition is filed anywhere else in connection with this accident impleading the owner of the stationed Lorry and its Insurer ?”

10.At the time of admitting this appeal, this Court has passed an interim order in C.M.P.No.20403 of 2016 in C.M.A.No.2812 of 2016 on 02.01.2017, directing the Insurance Company to deposit 50% of the award amount together with interest to the credit of M.C.O.P.No.201 of 2014 on the file of the Subordinate Court Motor Accident Claims Tribunal, Tiruvannamalai. In view of remanding the matter back for denova trial, the appellant herein is permitted to withdraw back the money deposited with accrued interest, if any. However, if any award passed, the claimants will be entitled for the interest from the date of filing the claim petition i.e., on 27.01.2014.

11.In the result, the Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal in M.C.O.P.No.201 of 2014 dated 10.06.2016 is set aside and the matter is remanded back to the Tribunal for denova trial. The Tribunal is directed to dispose of the claim petition, as expeditiously as possible, preferably, within a period of four months from the date of receipt of a copy of this judgment. During trial, the parties are permitted to file additional documents, if any. No costs. Consequently, connected miscellaneous petition is closed.

11.09.2020

jbm

Note:- The Registry is directed to forward the original records along with a copy of this judgment immediately to the Tribunal.

Index: Yes

Speaking order/non speaking order

To

The Motor Accident Claims Tribunal
(Special Motor Accident Claims Tribunal),
Thiruvannamalai District.

G.JAYACHANDRAN.J.,

jbm



Pre Delivery Judgment made in

C.M.A.No.2812 of 2016

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