

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved :05.11.2020
Pronounced on :18.11.2020
CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.627 of 2016
and
C.M.P.No.5159 of 2016

M/s National Insurance Co.Ltd.,
Rep.by its Branch Manager and having
office at Jawaharlal Nehru Street,
Pondicherry.

... Appellant/ RespondentIII

/versus/

1.Tmt.Deivanai
W/o late Selvam

2.Minor Sugesh
S/o late Selvam

3.Minor Selvanayagi
D/o late Selvam

4.Minor Manikandan
S/o late Selvam

5.Mrs.Jayamarie
(Respondent No.2 is a minor rep.by his
mother and next friend the 1st respondent herein)

Respondents No.3 & 4 are minors rep.by their
grandmother and next friend Kuppammal)

.. Respondents1 to 5/ Respondents1 to 5

6.Mr.Iyyappan

7.M/s New India Assurance Company Ltd.,
Rep.by its Branch Manager, having its
office at No.30, Jawaharlal Nehru Street,
Pondicherry 605 001.

.. Respondents 6 & 7/
Respondents1 & 2

Prayer : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.106 of 2005 on 10.07.2015 on the file of the learned Motor Accident Claims Tribunal (Principal District Judge, Presiding Officer) at Pondicherry.

For Appellant : Mr. J. Chandran

For Respondents: Ms. G. Sumitra for R1 to R5

R6 and R7 not ready notice

J U D G M E N T

(The case has been heard through Video Conferencing)

The appeal is filed by the Insurance Company, being aggrieved by the the Motor Accident Claims Tribunal award fixing the liability to pay compensation of Rs.5,69,000/- to the family members of the car driver, who was murdered by the hirers to steal the car.

2. On 22/04/2003, three persons hired a Toyota Qualis car bearing registration No. TN-49-F-9885 owned by one Iyappan, the first respondent in the claim petition who was running a travel agency by name BlueLine Travels. They hired the car for travel from Puducherry to Thiruvannamalai and back to Puducherry. The deceased Selvam was the driver of the car. He left Puducherry with the three hirers on 22/04/2003 at about 4.00 pm. The next day, at about 11.00 am, the Auroville Police, Villupuram District received information from the Village Administrative Officer about the presence of a dead body near Navarkulam of Pattanur Village with injuries on neck. The body was identified as Selvam, the driver of the qualis car. The car and the hirers were missing. The police registered a criminal case and upon investigation, found the hirers of the qualis car, had killed the driver Selvam and decamped with the car. The hirers were identified as Jagan @ Asai Jagan, Kamal @ Kamalvathi and Pradeepkumar. Final report filed against them for offences under Sections 302 and 392 r/w 34 IPC. The wife, mother and 3 minor children of the deceased together filed the claim petition seeking compensation of Rs.10,00,000/-.

3. The Insurance Company denied liability, since the driver was murdered for gain and the death occurred not due to motor accident. The tribunal, relying upon the judgement of the Supreme Court rendered in Smt. Rita Devi and others -vs- New India Assurance Company Limited and another reported in [2000 TNLJ 28] held, the insurance company liable and awarded a compensation of Rs.5,69,000/- payable to the claimants.

4. In the appeal, the Insurance Company had contended that the tribunal considering the fact of the murder, not a matter for adjudication under Motor vehicle Act, ought to have dismissed the claim petition. The Qualis car is not a transport vehicle to carry passengers for hire or reward. For violation of permit condition, the insurance company ought to be exonerated from the liability. The alleged crime of murder suspected to have occurred at midnight of 22/23 -04-2003. The tribunal had tentatively fixed the time of death as after the midnight and held the appellant/insurance company liable, exonerating the New India Assurance Company which issued insurance cover to the vehicle upto midnight of 22-04-2003. The quantum of compensation is excessive and against the precedent laid by the of Supreme Court. Therefore, it has to be reduced.

5. The learned counsel for the respondents/claimants submitted that the Tribunal award is unassailable. The liability of the insurance company was fixed relying upon the dictum laid by the Hon'ble Supreme Court. The First Information Report (Ex.A-1), Final Report (Ex.B-1) and the evidence of the Inspector of Police attached to Auroville Police Station (RW-1) proved the fact that the Selvam the driver was murdered on the midnight of 22/23-04-2003 by the hirers to rob the car. The insurance coverage for the vehicle till 21/04/2003 was with the New India Assurance Company (second respondent in the claim petition) and from 22/04/2003, the vehicle had insurance coverage with the National insurance company (appellant/third respondent in the claim petition). The insurance policy copy were marked as Ex.A-3 and Ex.A-4. Being a case of death during the course of employment as driver, the appellant is liable to pay compensation.

6. Heard the learned counsels appearing for the appellant and the learned counsel appearing for respondents 1 to 5. Records perused.

7. The final report [Ex.B-1] marked through RW-1 speaks about the circumstances under which Selvam the driver of the Qualis car died. Ex.A-3 is the insurance policy for the Qualis car bearing registration No.TN-49-F-9885 covering the risk upto midnight of 21/04/2003 issued by the New India Assurance Company Limited. Ex.A-4 is the insurance policy for the said car covering risk commencing from 00.00 hrs of 22/04/2003 to midnight of 21/04/2004. Total premium of Rs.15,852/- inclusive of tax had been collected from the vehicle owner by the insurance company- the appellant herein with IMT endorsement 5,22,16 and 29. The policy specifically mentions that the risk coverage is for use

of the vehicle for the purpose other than hire or reward. The RC of the said vehicle is marked as Ex.A-2 reveals that it is a non-transport vehicle. Thus, from the pleadings and evidence, it is clear that the non-transport vehicle has been used for hire and in the course of that, the driver was killed by the hirers to steal the car.

8.The Tribunal had relied upon the judgment of the Hon'ble Supreme Court rendered in Smt.Rita case cited supra to entertain the claim petition. As far as the jurisdiction of the Motor Accident Claims Tribunal to entertain the claim petition in case of murder during the pursuit of stealing the motor vehicle, the Hon'ble Supreme Court in the said judgment had held that, We find that the deceased, a driver of the auto rickshaw was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw they has to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts nad circumstances of this case, the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of committing the theft of the auto rickshaw."

9.The Hon'ble Supreme Court has referred two judgments from Court of Appeals to buttress their finding. Those two judgments are worth extracting to understand the legal position in case of these nature.

(i)Challis -vs- London and South Western Railway Company [1905 (2) KB 154]. In this case, an engine driver while driving a train under a bridge was killed by a stone willfully dropped on the train by a boy from the bridge that his injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held:

"The accident which befell the deceased was as it appears to me one which was incidental to his employment. The argument for the respondents really involves the reading into the act of a proviso to the

effect that an accident shall not be deemed to be within the Act if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the Legislature intended so to limit the operation of the Act. The result is the same to the engine driver from whatever cause the accident happened: and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously."

(ii) Nisbet -vs- Rayne & Burn reported in [(1910) 1 KB 689]. In this case, a cashier while travelling in a railway to a colliery with a large sum of money for the payment of his employers workmen was robbed and murdered. The Court of appeal held:

"That the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of" an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the workmen's compensation Act, 1906. In this case of Court followed its earlier judgment in the case of Challis (supra). In this case of Nisbet the Court also observed that "it is contended by the employer that this was not an "accident" within the meaning of the Act because it was an intentional felonious act which caused the death and that the word "accident" negatives the idea of intention. In my opinion this contention ought not to prevail. I think it was an accident from the point of view of Nisbet and that it makes no difference whether the pistol shot was deliberately fired at Nisbet or whether it was intended for somebody else and not for Nisbet."

10. Therefore, it is clear from the decision of the Hon'ble Supreme Court in Rita case that, the judicially accepted interpretation of the word 'death' in Workmen Compensation Act, 1923, has to be applied for cases under Motor Vehicles Act, 1988, since both the legislations are welfare legislations enacted with the object to compensate the victims of accidents. Under section 167 of the Motor Vehicles Act, it is the option of the victim either to proceed to claim compensation under the Workmen's Compensation Act or under the Motor Vehicles Act.

11.As a result, the Tribunal award holding that the death of Selvam is an accident with in the scope of Motor Vehicle Act and the Motor Accident Claims tribunal have jurisdiction to entertain the claim petition is upheld. The deceased was a driver by profession. He died at the age of 28 years. The tribunal has awarded a sum of Rs.5,49,000/- as compensation. Considering the evidence, this Court is of the view that the quantum of compensation awarded is just and fair. Hence, confirmed.

12.As far as the liability, the vehicle owner had used the vehicle for hire. Being a non transport vehicle, use of the vehicle for hire or reward is violation of policy condition. Therefore, the insurance company/ appellant herein is given liberty to pay and recover from the vehicle owner.

13.The appellant/M/s National Insurance Company is directed to pay the compensation awarded by the tribunal, within 8 weeks from today, with liberty to recover the same from the owner of the vehicle, as per the dictum laid in Nanjappa vs. State of Karnataka case.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ari

To:
Motor Accident Claims Tribunal,
Principal District Judge,
Presiding Officer at Pondicherry.

Copy to:
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.J.Chandran , Advocate SR.No. 36922

+1cc to Mr.G.Sumithra, Advocate SR.No. 36976

C.M.A.No.627 of 2016
& C.M.P.No.5159 of 2016

sr co
A.SK(19.04.2021)