

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.02.2020
C O R A M
THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1562 of 2014
and
M.P.No.01 of 2014

The Manager,
Bajaj Allianz General Insurance
Company Limited,
Chennai 600 006.

.... Appellant/2nd Respondent

Vs

1.Gowri1st Respondent/Claimant

2.R.Hari Babu

....2nd Respondent/1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order made in M.C.O.P.No.133 of 2012 dated 27.01.2012 on the file of the II Additional District and Sessions Court, Motor Accident Claims Tribunal, Ranipet, Vellore District.

For Appellant : Mr.R.V.Sivaraj

For Respondents: No appearance

J U D G M E N T

The appellant/Bajaj Allianz General Insurance Co Ltd., who is the second respondent in the MCOP.No.133 of 2012 dated 27.01.2014 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Ranipet, Vellore, has preferred the present appeal.

2. The 1st respondent is the claimant in M.C.O.P.No. 133 of 2012, on the file of the II Additional District Court, (Motor Accident Claims Tribunal), Ranipet. She filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of Mathivanan in the accident that took place on 28.12.2010.

3. The case of the Petitioner is that the son of the first respondent, who was studying VIII Standard in Rasathupuram Government School was playing in the village ground on 28.12.2010 at about 12.00 hours. At that time, a tractor bearing registration No.TN 23 AV 8123 owned by the second respondent herein, driven by its driver one Ponnambalam in a rash and negligent manner, dashed against the said Mathivanan and he fell down and the tractor tyre ran over him and caused severe injuries and he died on the same day.

4. According to the 1st respondent, on the date of accident, while her son was playing in the village ground, the driver of the 2nd respondent's tractor, driven the tractor bearing Registration No.TN-23-AV-8123 in a rash and negligent manner and dashed against the 1st respondent's son and caused accident. The deceased was aged about 13 years, when the accident happened. According to the 1st respondent, the driver of the tractor is responsible for the accident and the owner and insurer of the vehicle are liable to pay compensation.

5. The appellant herein filed a counter statement before the Tribunal and denied involvement of the alleged Tractor in the accident. According to the appellant, the manner of accident narrated in the FIR and the petition is false. It is further submitted that as per FIR contents at the time of alleged accident, the deceased traveled in the Tractor as an unauthorized passenger. At the time of alleged accident, in the insured vehicle tractor. 3 persons traveled in the driver's cabin. which is exclusively meant for goods carrying purpose. Thereby, the policy terms and conditions have been breached. For the breach and violation of the terms and conditions of the insurance policy, the appellant-Insurance Company is not liable to pay any compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, on the side of the prosecution, P.W.1 to P.W.4 were examined and marked 3 documents as Exs.P1 to P3. The appellant examined two witnesses as R.W.1 and R.W.3 and marked 10 documents as Exs.R1 to R10.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to the rash and negligent driving of the driver of the tractor belongs to the 2nd respondent and directed the appellant-Insurance Company as insurer of the vehicle to pay a sum of Rs.5,00,000/- as compensation to the 1st respondent at the first instance and recover the same from the 2rd respondent.

8. Against the said award dated 27.01.2014, made in M.C.O.P.No.133 of 2012, the appellant has come out with the present appeal.

9. Learned counsel appearing for the appellant submitted that tribunal went wrong in holding the appellant liable and went wrong in directing the appellant to pay a huge compensation of Rs.5,00,000/-. The Tribunal having found that the driver of the tractor had no driving licence at all to drive the vehicle, went wrong in directing the appellant to pay the compensation and then to recover it from the owner of the vehicle. The Tribunal went wrong in holding that the deceased was working in the tractor, in spite of the pleadings and records which showed that the deceased, who was playing, climbed the tractor and in order to throw the deceased off the vehicle, the driver of the vehicle suddenly applied the brakes and fell him off the vehicle, causing the accident. The Tribunal ought to have found that the deceased was travelling in the vehicle as unauthorized passenger and therefore, the appellant was not liable. The learned tribunal failed to appreciate that the death of the deceased was only due to the inhuman, heinous and murderous act of the driver and owner of the vehicle, who in spite of knowing that the deceased was injured and was alive, not only failed to take the deceased to the hospital but also allowed the deceased to die, after few hours. The Tribunal has failed to appreciate that even if the driver and owner had arranged to send the deceased to the hospital through somebody, the life of the deceased would have been saved. The death of the deceased was solely due to the inhuman, heinous and murderous act of the driver and owner of the vehicle. Hence, the learned counsel for the appellant prays to allow the appeal.

10. Heard the learned counsel for the appellant and perused the materials available on record. There is no representation on behalf of the respondents.

11. From the materials on record, it is seen that the accident has occurred due to rash and negligent driving by the driver of the 2nd respondent. In such circumstances, the Insurance Company is directed to pay the compensation to the claimant at the first instance and recover the amounts from the owner of the vehicle. The Tribunal following various judgments of the Hon'ble Apex Court and this Court, ordered for pay and recovery. There is no error in the reasoning of the Tribunal in ordering pay and recovery.

12. As far as the quantum of compensation is concerned, the 1st respondent has contended that the deceased was studying in VIII standard. The accident is of the year 2010. At the time of accident, the deceased was aged about 13 years. The Tribunal considering the contention of the 1st respondent and awarded a sum of Rs.5,00,000/- and the same is not excessive and the facts of the present case are proper and valid. Hence, the amounts awarded by the tribunal also is not excessive.

13. In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.5,00,000/- along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No. 133 of 2012 at the first instance and recover the same from the 2rd respondent. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn, if any, by filing necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

sbn

To

1.The Motor Accident Claims Tribunal,
II Additional District and Sessions Court,
Ranipet, Vellore.

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

+1 cc to M/s.R.V.Sivaraj Advocate sr15176

C.M.A.No.1562 of 2014
and
M.P.No.01 of 2014

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