

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.82 of 2014

1. Devika
2. Arunkumar
3. Kavitha

... Appellants

Vs.

1. Nirmala
2. M/s Cholamandalam MS General Insurance Co.,
"Dare House" II floor,
N.S.C.Bose Road,
Chennai - 600 001

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree of the Motor Accident Claims Tribunal (1st Additional District Judge, Cuddalore), made in M.C.O.P.No.7 of 2011 dated 30.01.2013.

For Appellants : Mr.N.Suresh

For R2 : Mr.E.Rajadurai for
Mr.M.B.Raghavan
R1 - Served - Name printed - NA

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 30.01.2013 made in M.C.O.P.No.7 of 2011 on the file of the Motor Accidents Claims Tribunal (1st Additional District & Sessions Court), Cuddalore.

2. The case of the appellants is that on 11.08.2008 at about 4.00 hrs, the deceased, who is the husband of the 1st appellant and father of the appellants 2 and 3 was travelling in the 1st respondent's vehicle bearing Regn.No.TN23AE5805 along with his goods [owner of the snacks] from Gudiyatham to Bangalore to supply the snacks to the sweet shop; on Krishnagiri to Hosur road, near Solamalai Canal, the driver of the vehicle had driven the vehicle in a rash and negligent manner and dashed against the backside of the vehicle, which was proceeding in front of them and the deceased died on spot. The deceased was a snacks merchant and was earning a sum of Rs.15,000/- per month. The appellants, who are the legal heirs of the deceased had filed the claim petition claiming a sum of Rs.15,00,000/- against the respondents, who are the owner and insurer of the offending vehicle respectively.

3. Denying the entire averments stated in the claim petition, the 2nd respondent has filed a counter affidavit. It is stated in the counter affidavit that the 1st appellant in her cross examination has admitted that there is no evidence or license to show that the deceased was performing snacks merchant business. Further, the Insurance company also states that the said deceased had travelled in the vehicle as an unauthorised passenger. Since the driver of the lorry as well as the deceased violated the terms and conditions of the Insurance policy, they pleaded to exonerate them from paying compensation.

4. The Motor Accidents Claims Tribunal (1st Additional District Judge) Cuddalore after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the appellants and awarded Rs.5,03,000/-, as compensation, as follows. Further, the Tribunal completely exonerated the Insurance Company and directed the 1st respondent to pay the said award amount to the appellants.

S.No.	Description	Amount
1.	General Compensation	4,68,000/-
2.	Loss of love and affection	20,000/-
3.	Funeral expenses	5,000/-
4.	Loss of consortium for 1st appellant alone	10,000/-
	Total	5,03,000/-

5. Aggrieved by findings of the Tribunal, the appellants have filed the present appeal before this Court stating that the Tribunal has committed a serious error in fastening the liability only on the 1st respondent owner of the vehicle and the deceased had travelled as owner of the goods and as such, the insurance company is liable to pay the compensation. Further, the decisions relied on by the insurance company before the Tribunal is not at all applicable to the case on hand and R.W.1, who is the Assistant Manager of the Insurance company has also admitted that the policy is a package policy, as such, the court below ought to have ordered the insurance company to pay the compensation, however, failed to do so, hence this petition.

6. Heard the learned counsel for the appellants and the learned counsel for the second respondent and perused the materials available on record. Though notice was served to the 1st respondent and her name being printed in the cause list, there is no representation for her either-in- person or through learned counsel.

7. It is seen that now the dispute is only with regard to fixing the liability on the 1st respondent, and as far as the quantum of compensation is concerned, there is no dispute.

8. On perusal of the award dated 30.01.2013 passed by the Learned Motor Accidents Claims Tribunal (1st Additional District and Sessions Court), Cuddalore, in M.C.O.P.No.7 of 2011, it is seen that the appellants in order to prove that the first respondent's driver is the cause for the alleged accident, marked FIR copy as Ex.P1, which was against the first respondent's driver, but the first respondent's driver was not examined and has not proved his case before the Tribunal, and therefore, the Tribunal has rightly come to the conclusion that the first respondent's driver is the cause for the alleged accident.

9. Though it is evident from the evidence of the P.W.1 [widow of the deceased] and P.W.2 [eye-witness to the accident] that deceased was a snacks merchant, the Tribunal taking note of the cross examination of P.W.1, widow of the deceased, wherein she had stated that 'she does not know that her husband travelled with snacks at the time of accident' and based upon the said mere statement, the Tribunal has wrongly come to the conclusion that the deceased is not the owner of the goods. Normally, a person, involved in a business will start from his house at early morning and may not inform all his schedules to the family members, but the Tribunal has misconstrued itself and stated that the deceased has not travelled as owner of the goods at the time of the accident without any valid material to do so and held that he is an unauthorised passenger, thereby exonerated the insurance company, which is not correct in the eye of law.

10. With regard to the another point, viz., that there is no mention in the FIR that the deceased had travelled with snacks, is concerned, P.W.2, who is the eye witness to the accident had mentioned about the manner of the accident and the same corroborates with the evidence of P.W.1. Moreover, if a question had posed to him as to whether the deceased was travelling with snacks, he would have mentioned and the same was not posed to him and after witnessing the accident, he would have failed to mention the same, but the Tribunal had merely stated that there is no mention in the FIR that the deceased had travelled with snacks and wrongly exonerated the Insurance company and the same needs interference.

11. In view of the above, this Court is of the considered opinion that the deceased had travelled as owner of the goods, he is an authorised passenger and taking note of the evidence of R.W.2, Assistant Manager of the Insurance company, wherein he had deposed that the policy is the package policy, the insurance company / 2nd respondent is liable to compensate

the appellants. Therefore, the amount awarded by the Tribunal, viz., Rs.5,03,000/- is hereby confirmed and the same shall be deposited by the Insurance company / 2nd respondent within a period of four weeks from the date of receipt of copy of this Judgment with interest at the rate of 7.5% per annum from the date of petition till the date of realization. On such deposit being made, the appellants / claimants are permitted to withdraw their respective shares, as apportioned by the Tribunal by filing a formal petition before the concerned Court.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal (1st Additional District Judge, Cuddalore),

2. The Section Officer, VR Section, High Court, Madras.

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