



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 11.12.2020
JUDGMENT DELIVERED ON : 26.02.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.738 OF 2012

The Oriental Insurance Co. Ltd.,
Branch Office, Namakkal ...Appellant / 3rd Respondent

Vs.

1.Mrs.A.P.Savithri
W/o. Late viswanathan

2.Mrs.V.Geetha
W/o. Satishdas

3.Mrs.V.Priya
W/o. Selvaraj ...Respondents 1 to 3 / Petitioners

4.P.Sukumaran
C/o. Krishna Auto Electrical Works

5.K.N.Krishnan ...Respondents 4 & 5 / Respondents 1 & 2

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1225 of 1997 dated 09.12.2002 on the file of the Motor Accidents Claims Tribunal, IInd Additional District Judge, Coimbatore.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 to 3 : No Appearance

Respondents 4 & 5 : Not ready in notice



JUDGMENT

(This case was heard through video conference)

The Civil Miscellaneous Appeal had been filed challenging the fair and decretal order dated 09.12.2002 passed in MCOP.No.1225 of 1997 by the Motor Accidents Claims Tribunal, IInd Additional District Judge, Coimbatore.

2. Aggrieved by the award passed by the Tribunal, the Insurance Company who was the second respondent before the Motor Accident Claims Tribunal, has filed this appeal.

3. The case in brief are as follows:

On 01.03.1989 at about 1.30 pm., while the deceased was riding a bi-cycle at Palani Road, Udumalpet, at that time, a Lorry bearing Registration No. TCS-5515 came in a rash and negligent manner, dashed against the deceased, as a result of which the fatal accident occurred.

4. Mr.S.Arun Kumar, learned counsel for the appellant/Insurance Company has submitted his arguments. As per his submissions, the accident took place in the year 1989. It is a case of fatal accident. As per the provisions the then prevailing the Motor Vehicles Act, the Motor Accident Claims Cases shall be filed before the Tribunal under whose jurisdiction the accident took place within a period of six months from the date of the accident.

5. The Motor Vehicles Act was amended in the year 1989 and at that time, the jurisdiction to file the claim cases and limitation period for filing the claim cases were not amended. Subsequently, in the year 1994 the Motor Vehicle Act was thoroughly amended wherein the place of filing of the claim cases was amended in such a way that the affected party can choose the Tribunal that is near to his or her place of his residence, instead of filing it in the place of occurrence. Likewise, the limitation period of six months was revoked. Therefore, there is no limitation to file claims. This case had been filed in the year 1997 after 8 years of the accident. Therefore, Motor Accident Claim Case is not maintainable on the date of the filing of the claim petition. The said contention was raised by the second respondent/Insurance Company before the Motor Accident Claims Tribunal, Coimbatore.



6. The Motor Accident Claims Tribunal ignored the said contention and granted an award of Rs.1,46,000/-. Therefore, aggrieved by the said award, the second respondent/Insurance Company has approached this Court for filing this appeal.

7. Mr.D.Shivakumaran, learned counsel for the respondents/ claimants did not appear or contest the submissions of the learned counsel for the Insurance Company.

8. Point for consideration

Whether the appellant/Insurance Company is entitled to setting aside the order passed by the Tribunal.

9. Perused the claim petition filed by the claimants before the Motor Accident Claims Tribunal in MCOP.No.1225/1997, the counter filed by the second respondent/Insurance Company and the Judgment/Order passed by the Motor Accident Claims Tribunal and the Memorandum of appeal filed in this appeal.

10. On perusal of the award passed by the Motor Accident Claims Tribunal, it is found that the submissions of the learned counsel for the appellant/Insurance Company is acceptable. When the claimants before the Tribunal had not chosen to file the claim petition within the limitation period of six months from the date of accident ie., 1989, the claim petition cannot be entertained after a period of six months. Here, the claimants filed the case in the year 1997. The claim petition has been filed beyond the period of limitation. The explanation offered by P.W.1, the witness who was examined in the witness box was that they had handed over the case to the advocate, who did not file the case in time. Therefore, they had sought relief against the advocate under the Consumer Relief Act. Only after that this case had been filed. Therefore, the delay had occurred. The said contention is also not acceptable. When the claimants had not approached the Court within the period of limitation, then the documents filed and relied on by the claimants cannot at all be accepted in this case, as it had been created for the purpose of claim petition. Therefore, the award passed in the year 1997 is found unacceptable as per law.

11. The contentions raised by the Insurance Company is accepted and the point for consideration is answered in favour of the appellant/Insurance Company and against the claimants.



In the result, the award passed by the Tribunal in MCOP.No.1225 of 1997 is set aside.

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

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

dh

To

The Motor Accidents Claims Tribunal,
IInd Additional District Judge,
Coimbatore.

Copy To

The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.D.Shivakumaran, Advocate SR.No.11956

+1cc to Mr.S.Arunkumar, Advocate SR.No.12008

C.M.A.No.738 of 2012

CA(CO)
RVM(30/09/2021)