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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2062 of 2019

1. Vijayalakshmi

2. Minor.Bharath
(Rep by his guardian/mother
1st appellant viz., Vijayalakshmi)

3. Tamilarasi

4. Lakshmanan

..Appellants/Petitioners

Vs.

1. Sivakumar

2. The Divisional Manager,
National Insurance Company Limited,
110, Jawaharlal Nehru Street,
Pondicherry.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 12.09.2018 made in M.C.O.P.No.170 of 2017, on the file of the III Additional District Court, (Motor Accidents Claims Tribunal), Kallakurichi.

For Appellants : Mr.N.S.Suganthan
for Mr.N.Manokaran

For Respondents : No Appearance (For R1)
Mr.G.Anandhan (For R2)

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode")

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 12.09.2018 made in M.C.O.P.No.170 of 2017, on the file of the III Additional District Court, (Motor Accidents Claims Tribunal), Kallakurichi.



2.The appellants-claimants, filed M.C.O.P.No.170 of 2017, on the file of the III Additional District Court, (Motor Accidents Claims Tribunal), Kallakurichi, claiming a sum of Rs.50,00,000/- as compensation for the death of one Krishnamoorthy who died in the accident that took place on 08.11.2015.

3.According to the appellants, on the date of accident, the deceased Krishnamoorthy was travelling in a Lorry bearing Registration No.TN-28-AC-8420 under the employment of 1st respondent as a Lorry Cleaner and Apprentice Driver, with load from Kallakurichi to Odisha State. After unloading and returning from Odisha, near Chellafurati OFC Perot Pump, while alighting from the Lorry, the said Krishnamoorthy fell down and sustained grievous injury on head. Due to the head injury, the said Krishnamoorthy died. The accident occurred when the deceased was under the employment of the 1st respondent. Hence, the appellants filed the said claim petition, claiming compensation for the death of Krishnamoorthy against the 1st respondent as owner and appellant as insurer of the said Lorry respectively.

4.The 1st respondent, owner of the Lorry, remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 to 3 in the claim petition, including the manner of accident. According to the appellant, the said Krishnamoorthy did not die during his employment as a Cleaner and Apprentice Driver with the 1st respondent. Hence the 2nd respondent-Insurance Company, insurer of the Lorry is not liable to pay compensation to the appellants. In any event, the appellants have to prove that the Lorry was insured with the 2nd respondent, driver of the Lorry possessed valid driving license to ply the vehicle and possessed vehicular records viz., Fitness Certificate and Permit at the time of accident. The appellants also have to prove the age, avocation and income of the deceased, to claim compensation. The total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 4th appellant examined himself as P.W.1 and marked 9 documents as Exs.P1 to P9. The respondent examined one Sivakumar as R.W.1 and marked 4 documents as Exs.R1 to R4.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that as per Section 167 of the Motor Vehicles Act, the appellants can claim compensation either under the Motor Vehicles Act or Workmen's Compensation Act and directed the 1st respondent to pay a sum of Rs.15,82,600/- as



compensation to the appellants. The Tribunal dismissed the claim petition as against the 2nd respondent-Insurance Company.

8. Challenging the dismissal of claim petition as against the 2nd respondent and not being satisfied with the amounts awarded by the Tribunal in the award dated 12.09.2018 made in M.C.O.P.No.170 of 2017, the appellants have come out with the present appeal.

9. The learned counsel appearing for the appellants contended that the reasons given by the Tribunal for fixing liability on the owner and exonerating the 2nd respondent-Insurance Company from its liability is against law and evidence. The Tribunal erred in exonerating the Insurance Company on the assumption that the accident occurred when the vehicle was stationery and not plying on the road. The 2nd respondent-Insurance Company had admitted that the vehicle was insured with them, but the Tribunal exonerated the Insurance Company on the ground that death has not 'arisen out of use of Motorcycle'. This Court, in the judgment reported in 2013 (1) TNMAC 685 [National Insurance Co., Vs. P.Alagesan] has held that whenever an accident occurs as to whether the vehicle is on road, driven, repaired, parked, kept stationery or left in an unattended condition of vehicle in question or involved in accident, the claimants are entitled to make a claim for compensation under the Motor Vehicles Act. The learned counsel appearing for the appellants further contended that technicalities should not stand in the way of awarding compensation and in any event, the Courts can order pay and recovery and prayed for a direction to the respondents to grant compensation to the appellant.

10. In support of his contention, the learned counsel appearing for the appellants relied on the following judgments:

(i) 2013 (1) TNMAC 685 (Mad) [National Insurance Co. Ltd., Vs. P.Alagesan]:

"25. Reverting back to the case on hand, it is the case of the respondent/claimant that on 29.09.2009, about 10.50 A.M., he came from Coimbatore, taking TV sets in his lorry, bearing Registration No.TNW 6507, to deliver the same to Mummy-Daddy TV Showroom, Komarapalayam and when he was removing the tarpaulin sheet, he accidentally fell down, from a height of 15 feet and sustained grievous injuries, in his left temporal parietal region and tenderness over left side of chest. A case in Cr.No.805 of 2009, has been registered as an accidental fall, on the file of Komarapalayam Police Station, under Ex.P1 FIR.

26. In the complaint lodged by the



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respondent/claimant to the Police, the respondent has admitted that it is an accidental fall. Perusal of the award also shows that during cross-examination, the respondent/claimant has admitted that the accident was unexpected and that the Police has closed the criminal case. However, PW.1, injured has denied the suggestion that since the criminal case has been closed, he is not entitled to claim compensation. He has also denied the suggestion that as it was not a motor accident, the Insurance Company is not liable to pay compensation.

27. RW.1, Administrative Officer of the Insurance Company has deposed that inasmuch as the owner of the vehicle/insured, in his complaint, has stated that he himself had fallen down from the top of the vehicle and as the complaint itself has been closed, the respondent/claimant is not entitled to compensation. Perusal of the Policy shows that the appellant-Insurance Company has received a sum of Rs.100/- under Personal Accident Cover to owner-cum-driver. Liability under the policy is Rs.2 Lakhs.

.....
55. In the light of the decisions, stated supra, whenever an accident occurs, as to whether the vehicle is on road, driven, repaired, parked, kept stationary or left in an unattended condition of vehicle in question or involved in accident, the injured is entitled to make a claim for compensation under Section 163-A or 166 of the Motor Vehicles Act, depending upon the income. All that is required is the use of vehicle and that an accident should have occurred. The expression, "accident arising out of and use of motor vehicle" has been explained in the earlier paragraphs of this Judgment. As the respondent, being the owner, has already paid a sum of Rs.100/- as additional premium under the Personal Accident Cover, to cover the death or bodily injuries to the owner-cum-driver, where the liability is limited, upto Rs.2 Lakhs, the insurer is liable to pay compensation. However, in the case on hand, the Claims Tribunal has awarded compensation of Rs.1,65,000/-, with interest at the rate of 7.5% per annum."

(ii) 2004 (2) TNMAC 23 (Mad) [United India Insurance Co. Ltd., Vs. Amir Basha]:



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"13. It is clear from the above decisions and in view of the object of the enactments, both under the [Motor Vehicles Act](#), 1939 and 1988 the expression "caused by" and "arising out of" have a wider connotation. Though the accident should be connected with the use of motor vehicle, but the said connection need not be direct and immediate. The expression "arising out of use of motor vehicle" as mentioned in [Section 92-A](#) of the 1939 Act and [Section 165](#) of 1988 Act enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment. From the expression employed namely "accident arising out of the use of a motor vehicle" in the place of "accident caused by the use of motor vehicle", it is clear that the Legislature wanted to enlarge the scope of the word "use" and not to restrict it for denying compensation in deserving cases; accordingly we are of the view that the test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not the motor vehicle was in motion then. We should not forget that these provisions are made in order to help the victims. We are of the view that restrictive interpretation should not be given for the word "use". We are also of the view that the expression "arising out of the use of motor vehicle" has to be given a wider meaning. We are also of the view that "use of motor vehicle" need not necessarily be so intimate and closely direct as to make it "a motor accident" in the sense in which that expression is used in common parlance. Accordingly, we hold that the death of Absar arose out of the use of motor vehicle, and the claimants/respondents 1 and 2 herein are entitled to compensation for the death of their son Absar."

11. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident has not occurred while the vehicle was plying on the road. In the manner of accident as alleged by the appellants, the Insurance Company is not liable to pay any compensation. Even according to the appellant, the accident has occurred during and in the course of employment of deceased with the 1st respondent. Remedy available for the appellants is only under the Workmen Compensation Act. The Tribunal has rightly exonerated the 2nd respondent-Insurance Company from its liability and prayed for dismissal of the appeal.



13. Heard the learned counsel appearing for the appellants as well as the 2nd respondent-Insurance Company and perused the materials available on record.

15. In the two judgments relied on by the learned counsel appearing for the appellants, this Court has held that even when the vehicle was stationery and injury or death has occurred involving motor vehicle, the claim petition under the Motor



Vehicles Act is maintainable and the Insurance Company is liable to pay compensation. In view of the ratio in the judgments relied on by the learned counsel appearing for the appellants, the award of the Tribunal exonerating the 2nd respondent-Insurance Company is liable to be set aside and is hereby set aside. The learned counsel appearing for the 2nd respondent-Insurance Company contended that the vehicle was not insured with them and the driver did not possess valid driving license and examined R.W.1 to substantiate their case. The Tribunal has not considered the oral and documentary evidence let in by both the parties. In view of the same, M.C.O.P.No.170 of 2017 is remanded for fresh consideration on merits. The M.C.O.P. is of the year 2017 and the learned III Additional District Judge, Kallakurichi, is directed to dispose of the M.C.O.P., as early as possible, in any event not later than three months from the date of receipt of a copy of this judgment. The parties are at liberty to adduce further evidence if they so desire.

16. With the above direction, the appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The III Additional District Judge,
(Motor Accident Claims Tribunal),
Kallakurichi.

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

+1cc to M/s.N.Manokaran, Advocate, S.R.No.17367

+1cc to Mr.G.Anandan, Advocate, S.R.No.17159

C.M.A.No.2062 of 2019

SR(CO)

RGA(08/10/2021)