IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

C.M.A. No.953 of 2018

1. R.Maruthammal
2. R.Ramya (Minor)
   (Rep by her mother and next friend Maruthammal)
   M.Chinnammal (deceased) No Lrs. arrayed in CMA

... Appellant

Vs.

1. T.Mahalingam

2. The New India Assurance Company Limited
   No.46, 2nd Line Beach, Moores Street,
   Chennai - 600 001
   Now at Door No.232, NSC Bose Road,
   Bombay Mutual Building
   Chennai -1

3. M/s.Classic Surface Transport Limited.,
   No.39 (N.P) Industrial Estate
   Ekkaduthangal, Chennai - 97

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of compensation against the Award and decree dated 20.03.2007 in M.C.O.P.No.2399 of 2002 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant : Mr.Ramya V Rao

For Respondents : Ms.LMeena for M/s.Sangamithirai-R2
R1- No Appearance
R3- Not ready in notice

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants for enhancement of compensation against the Award and decree dated 20.03.2007 made in M.C.O.P.No.2399 of 2002 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.

2. The claimants are respectively the wife, daughter and mother of the deceased Rajendran. The 1st respondent is the owner and the 2nd respondent is the insurer of the offending vehicle and the 3rd respondent is the employer of the deceased.

3. The case of the claimants is that on 19.08.2001 at 1.00 a.m., the deceased Rajendran travelled in the Lorry belongs to the 1st respondent, bearing Regn. No.TN-01-E-1029, while proceeding from South to North, opposite to Mount Post Office at GST Road, due to rash and negligent

driving of the driver of the lorry, the lorry dashed against the electric lamp post and capsized due to which, the said Rajendran died. At the time of accident, the offending Lorry was insured with the 2nd respondent/Insurance Company and that the said Lorry was operated on behalf of the 3rd respondent at the time of accident.

4.The claimants had filed the claim petition in M.C.O.P.No.2399 of 2002 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai, claiming compensation of Rs.6,00,000/- for the death of the deceased Rajendran, stating that the deceased was employee under the 3rd respondent. Though the offending vehicle originally belongs to the 1st respondent, he had insured the said vehicle with the 2nd respondent/Insurance Company. At the time of accident, the 1st respondent's vehicle was under the care and possession of the 3rd respondent. The deceased who died due to the accident was an employee under the 3rd respondent and therefore, the claimants had filed the claim petition against the respondents 1 to 3. The 1st respondent is the owner of the offending vehicle, the 2nd respondent is the insurer of the offending vehicle and the 3rd respondent is the employer of the deceased.

5. Before the Tribunal, the respondents 1 and 3 herein were set ex-parte.

6. Before the Tribunal, in order to prove the case of the claimants, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 4 documents were marked as Ex.P.1 to Ex.P.4. On the side of 2nd respondent/Insurance Company, one witness was examined as R.W.1 and one document was marked as Ex.R.1

7. The Tribunal, after hearing the arguments of both sides and considering the oral and documentary evidence, found that at time of accident, the offending vehicle was under the care and possession of the 3rd respondent and the deceased was working as employee under the 3rd respondent and thereby, fixed the liability against the 3rd respondent and awarded compensation of Rs.4,53,000/- (including interim compensation) from the date of claim petition i.e. 24.08.2001 till the date of realisation with cost and interest at 7.5% per annum.

8. Now the claimants have filed present appeal for enhancement of compensation and questioning the liability.

9. The learned counsel for the appellants/claimants submitted that the 1st respondent is the owner of the offending vehicle and it was insured with the 2nd respondent. The claimants are innocents and they did not know as to whether at the time of accident the vehicle was standing in the name of the 1st respondent or in the name of the 3rd respondent. The 1st and 3rd respondents remained ex-parte before the Tribunal and only the 2nd respondent/Insurance Company was the contesting respondent and they have stated that the policy is covered only to the employees of the 1st respondent and the premium was also paid. But the innocent claimants did not know as to the status of the employer as to whether the 3rd respondent is working under the 1st respondent, or the 3rd respondent is an independent legal entity. Since the vehicle which belongs to the 1st respondent was insured with the 2nd respondent, the 2nd respondent/Insurance Company is liable to pay the compensation or atleast, the Tribunal ought to have ordered pay and recovery. But the Tribunal, exonerated the 1st and 2nd respondents who are the owner and insurer of the offending vehicle and solely fixed the liability on

the 3rd respondent/company. The Tribunal went in wrong in fixing the liability solely on the 3rd respondent/company without any basis. When there is a valid policy for the offending vehicle, the Tribunal ought to have fixed the liability on the 2nd respondent/Insurance Company. The 1st and 3rd respondents herein, remained ex-parte before the Tribunal and in the absence of any evidence from the owner of the offending vehicle/1st respondent, the Tribunal, went wrong in exonerating the Insurance Company. Now the 3rd respondent is not found in the mentioned address. Further, the award passed by the Tribunal is on the lower side, insufficient, unjust and arbitrary. Therefore, it warrants interference by this Court.

10. The learned counsel for the 2nd respondent/insurance company submitted that the co-employee of the deceased was examined as P.W.2 who has categorically stated that himself and the deceased were working under the 3rd respondent. Though the 3rd respondent/Transport Limited was initially not impleded as a party and it was impleaded subsequently, a perusal of the original claim petition would show that in the claim petition itself, the 3rd respondent was shown as the employer of the deceased. Though initially the 3rd respondent/Transport Limited was not

impleaded as a party, subsequently, after filing of the claim application, they have been impleaded and the claimants have not proved that either the deceased was the employee of the 1st respondent or the 3rd respondent was working under the 1st respondent and that the insurance policy does not cover other than the employee of the 1st respondent. Therefore, the 2nd respondent is not liable to pay any compensation and the Tribunal has rightly appreciated the evidence and fixed the liability on the 3rd respondent. Hence, the learned counsel for the 2nd respondent/Insurance Company prayed to dismiss the appeal.

11. Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent/Insurance Company and perused the entire materials available on record.

12. Admittedly, the deceased was working as an employee under the 3rd respondent and he died due to the accident. One of the co-workers of the deceased was examined as P.W.2 and he has categorically admitted that the deceased was working under the 3rd respondent. Even in the claim petition, the 3rd respondent was shown as the employer of the deceased.

13. The main contention of the 2nd respondent/Insurance Company is that the policy covers only the employees of the 1st respondent. Though the offending vehicle belongs to the 1st respondent, at the time accident, the offending vehicle was not under the control of the 1st respondent and it was under the care and control of the 3rd respondent. The cause title shows that the 3rd respondent who is alleged to be the employer of the deceased, is a private Transport Company and it is a separate legal entity. Once the claimants themselves admitted that the 3rd respondent was the employer of the deceased, they are liable to get the compensation only from the 3rd respondent unless the claimants prove that the policy taken by the 1st respondent also covers the employees of the 3rd respondent or the claimants prove that this policy is taken for the employees of the 3rd respondent or otherwise, whoever in possession of the vehicle at the time of the accident, those persons also covers under the policy. But, in this case, the policy clearly shows that it covers the employees of the 1st respondent only and not covers other than employees of the 1st respondent.

14. Admittedly, at the time of accident, it is deemed 3rd respondent is the employer of the deceased who travelled in the offending

vehicle and the policy was not covered the employees of the 3rd respondent. Therefore, the Tribunal rightly appreciated the oral and documentary evidence and found that since the deceased was the employee under the 3rd respondent and the policy was not covered the employees of the 3rd respondent, came to conclusion that the 3rd respondent is liable to pay the compensation and the 2nd respondent/Insurance Company is not liable to pay the compensation. Therefore, there is no perversity in the appreciation of evidence and the findings of the Tribunal. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

15. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently connected Miscellaneous petition is closed. There shall be no order as to costs in the present appeal.

22.08.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1.The Motor Accidents Claims Tribunal,
II Judge, Small Causes Court, Chennai.

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

P.VELMURUGAN. J.

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