



C.M.A.No.2335 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM:

The HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2335 of 2017

Royal Sundaram Alliance Insurance Co. Ltd.,
No.186/5, 3rd Floor, Royal Towers,
New Bus Stand Road,
Meiyanur, Salem.4.

... Appellant

Vs.

1.Muthammal
2.Chandran
3.Saritha
4.Soundararajan
5.Prakashreddy

6.S.B.I.General Insurance Co. Ltd.,
“Natraj” 101, 201 & 301,
Junction of Western Express High Way,
Andheri (East), Mumbai.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 20.12.2016 made in M.C.O.P.No.496 of 2014 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Dharmapuri.



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For Appellant : M/s.G.Vasudevan
For Respondents : M/s.D.Devendran for R.1 to R.3
: M/s.S.V.Ilamvazhuthi for R.4
: M/s.K.Vinod for R.6

JUDGMENT

This Civil Miscellaneous Appeal is filed by the second respondent Insurance Company in MCOP.No.496 of 2014 challenging the award passed by the learned Special District Judge, Motor Accidents Claims Tribunal, Dharmapuri, wherein the insurer is directed to pay compensation to the claimants.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. The case of the claimants is as follows:

The deceased Backiaraj was travelling as an additional driver in a lorry cabin bearing Registration No.KA.01 C 5289 belongs to the first respondent and insured with the second respondent, from Salem to



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Bengaluru National Highway, driven by his colleague Driver, while it reached near Hosur Ashok Leyland Unit-1 Company, at about 05.00 a.m., driver dashed on the tipper lorry bearing Registration No.TN. No.70-7455 which was parked in the road without proper care. Due to the accident, the deceased sustained grievous injuries and died on the spot. Deceased was earning Rs.15,000/- per month as a driver and claimants are the dependents claiming compensation for a sum of Rs.15,00,000/- against owners and injurers of both the vehicle.

4. The first respondent who is the owner of the vehicle driven by the deceased was remained exparte and has not contested the claim petition.

5. The insurer of the first respondent's vehicle has filed counter and contended that the vehicle bearing Registration No.TN 70 7455 was parked in the middle of the road in negligent manner without proper indicators and lights which resulted in accident. Hence, the insurer and owner of the tipper lorry are liable to pay the compensation. The driver of the lorry belongs to the first respondent was not having valid driving license and there is a violation of policy conditions, hence this insurance



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company is not liable to pay the compensation.

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6. The third respondent the owner of the tipper lorry has not contested the claim petition and remained exparte.

7. The insurer of the third respondent's vehicle filed counter and contended that the driver of the lorry in which the deceased was travelling is responsible for the accident and the tipper lorry was parked on the left hand side of the road with proper indicators but the driver of the first respondent vehicle has driven the vehicle in a rash and negligent manner in high speed and hit on the stationed vehicle which resulted in accident, hence they are not liable to pay the compensation and the appeal is therefore liable to be dismissed.

8. Before the claims Tribunal, on the side of the claimants, two witnesses were examined as P.W.1 and P.W2 and exhibits Exs.P.1 to P.15 were marked in support of their claim petition. On the side of the respondents, R.W.1 to R.W.3 were examined and Exs.R.1 to R.7 were marked in support of their contention.



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9. After considering the evidence placed on record, the Tribunal in point No.1 has held that the rash and negligent driving of the driver of the first respondent is responsible for the accident. In point No.2. Tribunal has awarded Rs.10,14,000/- as compensation along with interest. In Point No.3, the Tribunal has held that the driver of the offending lorry belonging to the first respondent was not having valid driving license hence the principle of “Pay and Recover” is to be followed. Aggrieved over the award passed against the second respondent, this appeal is filed. Learned counsel for the Respondent No.2, Submitted that the Tribunal has not considered the negligent act of the driver of the third respondent, who parked the vehicle in the road without proper due care and caution. It is admitted case that it was cold day and the road was filled with fog, hence driver of the tipper lorry belonging to the third respondent is also equally responsible for the accident, and liability shall be fixed on the third and fourth respondents. He would further contend that there is no proper evidence adduced on the side of the claimants that the deceased was additional driver travelled in first respondent's vehicle and quantum of compensation is also on higher side, hence prays to modify the award.



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10. The learned counsel for the fourth respondent/insurance company has contended that there is no proper evidence adduced on the side of the respondent Nos.1 and 2 to show that the vehicle belongs to third respondent was parked negligently in the road without due care and caution, hence the Tribunal has rightly held that the driver of the first respondent is alone responsible for the accident, hence prays to confirm the award.

11. There was no representation on behalf of the claimant for the past two hearings.

12. I have considered the submissions made by the contesting parties and perused the material placed on record.

13. The case of the claimants that the deceased was travelled in the first respondent's vehicle and he was working as additional driver in the lorry. The evidence of P.W.1 is that the deceased was a graduate and after working in various places, he started to work as heavy vehicle driver. Accordingly, on 03.12.2013, he travelled in the first respondent's



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vehicle as a driver to transport goods from Salem to Bangalore. At the time of accident, one Raja S/o Chinnaiya, was driving the vehicle, deceased was sitting along with the driver inside the cabin and the accident was occurred at about 05.00 a.m., FIR for the occurrence has been lodged by the owner of the first respondent's vehicle. Ex.P.1 shows that first respondent has stated that his driver Mr.Raja S/o Chinnaiya was driving his lorry in the Hosur to Bangalore Highway, while he reached Ashok Leyland Unit-1 Company, the stationed lorry on the left hand side of the road which was parked without any indicating light, due to fog, the driver Raja dashed on the stationed vehicle which resulted in causing injuries to the driver Raja as well as Cleaner Balachandar and deceased Backiaraj.

14. P.W.2, Thirumalai who is the eyewitness to the accident, has stated before the Tribunal that he was at the Bakery Shop near the place of occurrence and at about 05.00 a.m., while he was walking near to Ashok Leyland Unit-1 Company, he had seen the tipper lorry parked on the left hand side of the road and a lorry bearing Registration No.KA 01 C 5289 came from Hosur to Bangalore direction in high speed and hit on the tipper lorry which resulted in accident causing death of the deceased.



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Evidence of P.W.1 and P.W.2 shows that road was filled with fog and a lorry was parked on the left hand side of the road and there is no evidence to show that the vehicle was parked with due care and caution. Their evidence also shows that driver of the first respondent driven the vehicle in high speed. It is submitted by the learned counsel for the appellant that P.W.2 was not an eyewitness to the occurrence and he was neither examined by police in the criminal case or during the investigation stage, hence his evidence could not be taken up for consideration. This Court is unable to accept the contention of the learned counsel for the appellant. As per the recent judgment of the Hon'ble Apex Court in ***Sunitha vs. Rajasthan State Road Transport Corporation***, (2020) 13 SCC 486 a person who has not examined by the police or who is not the eyewitness to the criminal case is entitled to give evidence if he has seen the occurrence and merely because he was not examined by the police during the investigation or in the criminal case, it is not a ground to reject or disbelieve his evidence. Respondent No.4, SBI General Insurance Company Ltd., has not adduced any evidence to support the case that the vehicle was parked with due care and caution and it was not parked in the road and it was parked only on the mud portion of the road i.e, the parking area adjacent to the road.



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15. Both sides have not marked rough sketch or any other document to show that exactly where the accident had taken place. However, the available evidence before the Tribunal is the evidence of P.W.1 and 2 which shows that the stationed vehicle was parked on the left hand side of the road that too in the early morning before the sunrise which means that there may not be sufficient light in the absence of any parking light and it is clear case of negligent parking in the middle of the road, which supports the case of the second respondent that the third respondent's vehicle has been parked negligently which contributed to the accident. Therefore, I am of the view that driver of the third respondent is responsible for the accident equally for the negligent parking and on his behalf, third respondent as well as the fourth respondent is liable to pay the compensation to the claimants.

16. The next contention raised by the appellant is that the deceased was travelled as gratuitous passenger in the lorry, but this Court is unable to appreciate the said contention, since the claimants marked the license of the deceased which supports the case of the claimant that the deceased was having valid heavy driving license who is eligible to drive



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the lorry of the first respondent and he was also travelled as additional driver in the cabin, hence I am of view that he could not be classified as gratuitous passenger. Before the Tribunal the second respondent has also examined the officials from the Regional Transport Office. By examining him, the insurance company has established that the driver Raja who has driven the vehicle of Respondent No.1 was not having valid driving license at the time of accident. The Tribunal after accepting the violations of policy conditions, ordered payment of compensation to the claimants by adopting principle of “Pay and Recover”, granting liberty to the insurance company second respondent in claim petition to recover the compensation from the owner of the vehicle-Respondent No.1 There is no infirmity in the said finding, hence this Court accepts the said finding and the principle adopted by the Tribunal is just and proper.

17. As discussed above, both the insurance companies are directed to pay each 50% of the compensation awarded by the Tribunal along with interest and costs. The Respondent No.2 is entitled to recover 50% of compensation paid by them from the first respondent and Respondent No.4 is entitled to recover 50% of compensation from the third respondent. Since the insurance company has not challenged the quantum of award passed by the Tribunal, this Court hereby confirms the



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same.

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18. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

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Index : Yes/No

Neutral Citation : Yes/No

To:

1.The Motor Accident Claims Tribunal,
The Special District Judge,
Dharmapuri.

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



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K.RAJASEKAR, J.

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