BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 30.11.2022

Delivered On : 02.01.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1414 of 2012

Iffco Tokyo General Insurance Co. Ltd.,
Tulsi Chambers,
3rd Floor, 195, T.V.Samy Road West,
R.S.Puram, Coimbatore-641 002. .. Appellant /2nd Respondent

Vs.

1.Ponnammal
2.Periannan
3.Muthusamy ... Respondents 1 to 3 / Petitioners
4.Venkatesan ... 4th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 17.07.2012, made in M.C.O.P.No.414 of 2007, on the file of the Motor Accident Claims Tribunal (Sub Court), Kulithalai.

For Appellant	: Mr.S.Srinivasa Raghavan
For Respondents	: Mr.N.Sudhagar Nagaraj for R1 to R3
	: No appearance for R4

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 17.07.2012, made in M.C.O.P.No.414 of 2007, on the file of the Motor Accident Claims Tribunal (Sub Court), Kulithalai. The appellant herein is the second respondent, the respondents 1 to 3 herein are the claimants and the fourth respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition in M.C.O.P.No. 414 of 2007, is as follows:

On 03.11.2006, at about 9.00 am., when the deceased-Marudhai was standing on the Trichy - Salem main road, near Iyyampalayam, a motorcycle bearing Registration No.TN-48-F-6357 came in a rash and negligent manner and dashed against the deceased. The deceased was taken to Government Hospital, Musiri, then he was admitted in Government Hospital, Trichy. The deceased was aged about 52 years and he was an Astrologer and was earning Rs.200/- per day. The petitioners are his dependents and they claimed a sum of Rs.5,00,000/- as compensation.

3. A brief substance of the counter filed by the first respondent in M.C.O.P.No. 414 of 2007, is as follows:

The first respondent and his vehicle are no way connected with the accident. In the accident register, it was stated that a TVS 50 vehicle was involved in the accident. Even in the F.I.R, it was mentioned that the TVS 50 has caused the accident and that the petition is to be dismissed.

4. A brief substance of the counter filed by the second respondent in M.C.O.P.No. 414 of 2007 , is as follows:

The age, occupation and income of the deceased are all denied. The vehicle did not involve in the alleged accident. The vehicle was falsely implicated in the accident. In the F.I.R, it was mentioned that it was only TVS 50 that caused the accident. Subsequently, the present vehicle was falsely implicated in this case. The petition is to be dismissed.

5. 2 witnesses were examined and 3 documents were marked, on the side of the claimants. 4 witnesses were examined and 2 documents were marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.1,90,000/- as compensation to be deposited by the second respondent.

6. Against the order, the second respondent / appellant has filed this appeal on the following grounds:-

The Tribunal is wrong in deciding that the vehicle was involved in the accident. The involvement of the vehicle was not proved by the claimants. When the owner of the vehicle himself has denied the involvement of the vehicle, it is wrong on the part of the tribunal is to reject the evidentary value of the pleadings and the evidence of the first respondent. The Tribunal failed to consider the evidence on record. Identification of the vehicle was mentioned in the F.I.R differs from the vehicle mentioned in the claim petition. Burden of proof of negligence on the claimants and not on the insurance company. The findings of the Tribunal regarding the involvement of the vehicle and fixing negligence on the driver of the insured vehicle is wrong.

7. On the side of the appellant, it is stated that the involvement of the vehicle is questioned. The first respondent denied the involvement of the vehicle. In the F.I.R, the brand name of the vehicle or the number of the vehicle are not mentioned. Since the police could not identify the vehicle, no charge sheet was filed, that is, no evidence with regard to the subsequent proceedings. R.W.2 was the Head Constable. R.W.3 was the Investigating Officer. R.W.4 was the Inspection officer. Exs.R1 and R2 are copies of CD file. The burden is on the claimants to prove the involvement of the vehicle. The Tribunal taken adverse opinion, since the insurance company failed to examine the rider of the vehicle, the decision of the Tribunal is

wrong. It is not the duty of the appellant, to prove the case. It was the duty of the claimants to prove the negligence. No witness relating to the occurrence was examined by the claimants, but, the insurance company examined that the witness and to prove the non involvement of the vehicle.

8. Ex.P1 was the copy of the F.I.R. Ex.R1 was the C.D file. Ex.R2 was the copy of the policy. It is stated that the charge sheet was not filed. On the side of the claimants, it is stated that since the rider of the vehicle residing near the police station, the police has not chosen to file the charge sheet.

9. The make of registration number of the two wheeler was not mentioned in the F.I.R. It is stated that in the accident register, it is stated that the deceased was hit by the TVS 50, but, no document was filed on the side of the appellant or on the side of the respondents. D.Palaniandi was examined R.W.2. P.Palaniandi was examined as R.W.3, retired Sub inspector of Police, who registered the F.I.R. R.W.3 has registered the F.I.R., but, he conducted inquest, in his deposition, he has stated that charge sheet was not filed. The vehicle was not recovered. He has admitted that there were no documents in the C.D file to show that the vehicle was seized and the inspector seized and sent to vehicle inspection.

10. It is clear that the respondents 1 and 2 did not examine the concerned Inspector or they did not offer any explanation for the non examination. R.W.1 has deposed that he had come to his mother-in-law house along with his wife and children. He has deposed that he was residing near Musiri Police Station, if at his vehicle was involved in the accident, the police would have recovered the vehicle and would have arrested him. In the evidence of R.W.1, it is stated that a private investigator was appointed by the Insurance Company and the private investigator has filed a report and only on the basis of that report, R.W.4 gave his statement, but, the private investigator was not examined as witness. The investigation report was not marked as a document.

11. It is seen that except the F.I.R, no other document was filed regarding the occurrence, the make and the number of the vehicle was not mentioned in the F.I.R. R.W.1 and R.W.2 have submitted the CD file. The alleged accident register copy was not available in the C.D file. R.W.4 has deposed regarding the private investigation, done by an official of the appellant, but, no such investigator was examined as a witness. The investigation report was not marked. R.W.1 is the owner of the vehicle, he has deposed that he was somewhere else, at the time of accident. No other witness was examined to prove that alibi, non seizure of the vehicle and not arresting the owner of the vehicle itself cannot be presumed that the

vehicle was not involved or the rider of the vehicle was not involved in the occurrence.

12. P.W.2 has deposed that the concerned vehicle was involved in the accident and that the rider of the vehicle was rash and negligent. Only 2 witnesses were examined as occurrence witness as P.W.2 and R.W.1. R.W.1 is an interested witness, whereas, P.W.1 is an independent witnesses. More weightage has to be given to the deposition of independent witness. Hence, it is decided that the vehicle mentioned in the claim petition was involved in the accident.

13. P.W.2 has deposed that the rider of the motorcycle was rash and negligent. There is no independent rebuttal evidence on the side of the appellant against the evidence of P.W.2. The manner of accident was proved by the evidence of P.W.2. Hence, it is decided that the rider of the motorcycle was rash and negligent and he caused the accident.

14. There is no dispute regarding the Insurance policy. The insurance policy was marked as Ex.R2. Hence, it is decided that the appellant is liable to pay compensation to the claimants on behalf of the fourth respondent-owner of the vehicle.

15. In Ex.P3-death certificate of the deceased was mentioned as 50 years. In Ex.P3 and Ex.P1-F.I.R, age of the deceased was mentioned as 80 years. In Ex.P2 -Post mortem report and inquest report and the CD file, the age of the deceased was mentioned as 80 years. The second respondent is the son of the deceased, who is aged about 45 years and hence, there is no possibility for the deceased to be aged about 50 or 52 years. The Tribunal fixed the age of the deceased as 80 years, on the basis of Ex.P1 and Ex.P2 and Ex.R1 and on the basis of the age of the 2 claimant. Hence, it is decided that the age of the deceased fixed by the Tribunal is reasonable.

16. On the side of the claimants, it is stated that the deceased was working as an Astrologer and he was earning Rs.200/- per day. No document to that effect was filed on the side of the claimants. Considering the nature of the work, the Tribunal fixed the income as Rs.4,000/- per month, which is reasonable. After deducting 1/3rd for the own expenses of the deceased and after applying multiplier '5', the Tribunal fixed the loss of income as Rs.1,60,000/-, which is reasonable.

17. The Tribunal awarded a sum of Rs.10,000/- for the first claimant, Rs.5,000/- for each of the claimants 2 and 3 (Totally Rs.10,000/-), towards loss of love and affection, Rs.5,000/- towards transport expenses and Rs.5,000/- towards funeral expenses, which are all reasonable.

18. Considering the above particulars, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. The Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs. 1,90,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / Insurance Company, the respondents 1 to 3 / claimants are permitted to withdraw their share amount as apportioned by the Tribunal with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants are not entitled for interest for the default period, if there is any.

02.01.2023

Index : Yes/No
Internet : Yes/No
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R. THARANI, J.

Ls

To

1.The Sub Judge,
Motor Accident Claims Tribunal
Kulithalai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.1414 of 2012

02.01.2023