In the High Court of Judicature at Madras

Dated : 01.7.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1034 of 2023
& CMP.No.9800 of 2023

M/s.Chola MS General Insurance
Co. Ltd., Coimbatore-18. ...Appellant

Vs

1.Mrs.P.Vijayalakshmi
2.Mr.P.Arjunan
3.Ms.P.Anitha ...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.11.2022 made in MCOP.No. 422 of 2019 on the file of the Fourth Additional District Court (Motor Accidents Claims Tribunal), Coimbatore.

For Appellant : Ms.R.Sree Vidhya
For Respondents : Mr.Menon

JUDGMENT

Aggrieved by the award dated 29.11.2022 in MCOP.No.422 of 2019 on the file of the Fourth Additional District Court (Motor Accidents Claims Tribunal), Coimbatore (for short, the Tribunal below), the Insurance Company has filed this appeal before this Court.

2. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents.

3. The facts leading to filing of this appeal are as follows :

(i) One Mr.Paramasivam was driving an auto rickshaw on 09.2.2018 with passengers. When he came near Govindasamy Layout at about 23 hours, the vehicle driven by the said Mr.Paramasivam ran over a pit (opposite to the house of one Mr.Venkateswaran), which was not covered and as a result, the said Mr.Paramasivam lost control of the vehicle and ultimately, the vehicle got capsized. The said Mr.Paramasivam sustained grievous injuries and succumbed to the injuries on 10.2.2018. It was under those circumstances, the claim petition came to be filed by the respondents, who are the wife and two children of the deceased, before the Tribunal below.

(ii) Before the Tribunal below, the appellant - Insurance Company filed a counter taking a very specific stand that the deceased in this case was a tort-feasor, that he was only a borrower of the vehicle and that therefore, the liability could not be saddled on the appellant. Accordingly, the appellant sought for dismissal of the claim petition.

(iii) The Tribunal below, on considering the facts and circumstances of the case and on appreciation of the evidence, came to the conclusion that the deceased was not a tort-feasor in this case and that even in a case where the driver of the vehicle had lost control over the vehicle by running over a pit, he or his dependants will be entitled to compensation. Having rendered such a finding, the Tribunal below proceeded to fix the total compensation at Rs.13,17,156/- under the following various heads :

S. No.	Compensation	Amount in Rs.
1	Loss of dependency	10,47,156/-
2	Funeral expenses	15,000/-
3	Loss of estate	15,000/-
4	Loss of consortium	1,20,000/-
5	Loss of love and affection	1,20,000/-
	Total award amount	13,17,156/-

(iv) The above compensation was directed to be deposited together with interest at the rate of 7.5% per annum from the date of petition till date of realization. Aggrieved by the award passed by the Tribunal below, the appellant - Insurance Company has filed this appeal.

4. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record. This Court has also carefully gone through the award passed by the Tribunal below.

5. The first issue that was raised by the learned counsel for the appellant is that the first respondent, who is the wife of the deceased, was the owner of the vehicle and is not a third party in this case, that therefore, the appellant cannot be made liable to pay the compensation, that the deceased was not a paid driver, that at best, he was only a borrower of the vehicle and that the deceased was under the influence of alcohol at the time of accident and hence, he was a tort-feasor in this case.

6. In order to substantiate her submissions, the learned counsel for the appellant has relied upon the judgments of the Apex Court in the case of

> ***(i) New India Assurance Company Ltd. Vs. Sadanand Mukhi [reported in 2009 (2) SCC 417];***
>
> ***(ii) Ningamma Vs. United India Insurance Co. Ltd [reported in 2009 (13) SCC 710]; and***
>
> ***(iii) Ramkhiladi vs United India Insurance Company [reported in AIR 2020 SC 527].***

7. In the instant case, there is no dispute with regard to the fact that the insurance policy stood in the name of the first respondent and

that the vehicle also stood in her name. Hence, it can be safely concluded that the as per the documents, the first respondent is the owner of the vehicle. It is a common practice that vehicles are purchased in the name of the wife and therefore, strictly speaking, the deceased cannot be treated as a borrower of the vehicle. For all practical purposes, he was in control and possession of the vehicle and hence, he can be treated as the owner of the vehicle.

8. The next issue pertains to the point that has been raised by the learned counsel for the appellant that the deceased was a tort-feasor in this case.

9. After the accident, a complaint came to be given against the deceased by one Mr.Sampathkumar, who was the passenger in the auto rickshaw. He stated in the complaint that due to darkness, the pit was not visible, that it was not closed and that therefore, the vehicle driven by the deceased ran over the same and got capsized. Ex.P.5 is the first information report that was registered by the police.

10. To decide as to whether the deceased was under the influence of alcohol, the most reliable document that can be taken note of is the copy of the post mortem certificate marked as Ex.P.2.

There is absolutely no indication in the post mortem certificate that the deceased was under the influence of alcohol at the time of accident. That apart, no steps were taken to produce the viscera report, which is normally sent for chemical analysis and which will clearly show as to whether alcohol has been consumed. Hence, there is no ground to come to a conclusion that the deceased was under the influence of alcohol merely based on the *ipse dixit* of the complainant, based on which, the first information report was registered. The manner, in which, the accident had taken place has also been spoken to by P.W.2, who was an eyewitness to the case and who also happens to be son-in-law of the deceased.

11. The Tribunal below proceeded to determine the compensation under various heads and in the considered view of this Court, compensation cannot be granted by bringing this case within the scope of Section 147 of the Motor Vehicles Act. The vehicle stood in the name of the first respondent/first claimant and the insurance policy also stood in her name. Considering the relationship between the deceased and the first respondent/first claimant, this Court holds that the deceased can be considered to be the owner of the vehicle.

12. If the deceased is considered to be the owner of the vehicle, at best, the claimants will be entitled only for the amount under the policy. Thus, a sum of Rs.2 lakhs can be paid under the policy and that too, to claimants 2 and 3 and not to the first claimant.

13. In the light of the above discussions, the compensation that has been fixed by the Tribunal below to the tune of Rs.13,17,156/- together with interest at the rate of 7.5% per annum is hereby set aside. This Court holds that claimants 2 and 3/respondents 2 and 3 will be entitled to a sum of Rs.2 lakhs under the policy. The decision rendered in this case is dependent upon the peculiar facts and therefore, this case shall not be cited as a precedent in future. The appellant is directed to deposit the entire amount as awarded in this judgment before the Tribunal below less the amount already deposited within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, claimants 2 and 3/respondents 2 and 3 are entitled to withdraw the same.

14. This civil miscellaneous appeal is accordingly allowed in the above terms. No costs. Consequently, the connected CMP is closed.

01.7.2024

N.ANAND VENKATESH,J

RS

To
The Fourth Additional District Court
(Motor Accidents Claims Tribunal),
Coimbatore.

CMA.No.1034 of 2023 &
CMP.No.9800 of 2023

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