Suseela Vs. M.Kumaran

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SooperKanoon Citation : sooperkanoon.com/1168634

Court : Chennai

Decided On : Oct-01-2013

Judge : C.S.Karnan

Appellant : Suseela

Respondent : M.Kumaran

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

01. 10.2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN C.M.A.No.2436 of 2007 1.Suseela 2.Minor.Ramkumar 3.Minor.Harikrishnan 4.Munirathinammal ... Appellants (Appellants 2 and 3 are rep. by their next friend and guardian 1st appellant Suseela) Vs. 1.M.Kumaran 2.The New India Assurance Co., Ltd., Divisional office, Officers Line Vellore ... Respondents PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.02.2007, made in M.C.O.P.No.81 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court, Vellore. For Appellants : Mr.V.K.Rajagopalan For Respondents : Mr.K.Vinod for R2 R2-Served - - -

JUDGMENT

The appellants / claimants have preferred the present appeal against the judgment and decree dated 22.02.2007, made in M.C.O.P.No.81 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court, Vellore.

2. The short facts of the case are as follows:- The claimants, who are the wife, minor children and mother of the deceased Dayalan had filed a claim petition in M.C.O.P.No.81 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court, Vellore, claiming a sum of Rs.10,00,000/- as compensation from the respondents for the death of the said Dayalan in a motor vehicle accident.

3. It was submitted that on 08.04.2005, at about 02.30 p.m., when the deceased Dayalan was proceeding in the first respondent's auto bearing registration No.TN23 AZ3263, along with his goods, from Arcot to Kavanoor and when it was near Thazhanurchattiram, the driver of the auto drove it at a high speed and in a rash and negligent manner and due to which it capsized. As a result, the deceased Dayalan had sustained grievous injuries and died on the spot. Prior to the accident, the deceased was working as a coolie and earning Rs.5,000/- per month. Hence, the claimants had filed the claim petition against the respondents, who are the owner and insurer of the auto bearing registration No.TN23 AZ3263.

4. The second respondent Insurance Company, in their counter statement, had stated that as the deceased had travelled with two others in the first respondent's goods auto, the policy conditions of insurance had been violated and as such the second respondent is not liable to pay compensation. It was submitted that the claimants should prove the age, income and occupation of the deceased and also prove that they are the legal heirs of the deceased through documentary evidence. It was submitted that the claim was excessive.

5. On considering the averments of both sides, the Tribunal had framed three issues namely: i. Whether the accident had occurred due to the rash and negligent driving by the driver of the first respondent's auto bearing registration No.TN23 AZ3263?. ii. Whether the claimants are entitled to get compensation?. If so, what is the quantum of compensation?. and iii. To what other relief they are entitled to

get?.

6. On the claimants' side three witnesses were examined as P.Ws.1 to 3 and eight documents were marked as Exs.P1 to P8 namely FIR, postmortem report, M.V.I's report, charge sheet, criminal Court Judgment, death and legal heir certificate and insurance policy. On the respondents' side one witness was examined as R.W.1 and two documents were marked as Exs.R1 and R2 namely investigation report and R.C.Book of Auto.

7. P.W.1 wife of the deceased had adduced evidence, which is corroborative of the statements of the claim petition regarding manner of accident and in support of her evidence, she had marked Exs.P1 to P8. On scrutiny of Exs.P1 and P4, it is seen that FIR had been filed against the first respondent's auto driver and that the police, after investigation, have also filed the charge sheet against him. On scrutiny of Ex.P5, it is seen that the driver of the auto had admitted his guilt and paid the fine before the criminal Court. Hence, the Tribunal on scrutiny of evidence of P.W.1 and on scrutiny of Exs.P4 and P5 held that the accident had been caused by the rash and negligent driving by the driver of the first respondent's auto.

8. R.W.1, investigation officer of the second respondent's firm, had adduced evidence that as per R.C.Book of the auto, only the driver was permitted to travel in the first respondent's auto and that insurance coverage had also been extended only to the driver and that as three persons had travelled in the goods auto at the time of the accident, the policy conditions of insurance had been violated and in support of his evidence, he had marked Exs.R1 and R2. On scrutiny of Ex.P8, it is seen that the first respondent's auto is a goods vehicle and that only one person i.e., driver was permitted to travel in it.

9. P.W.3 Manoharan had also admitted that at the time of accident three persons other than the driver had travelled in the first respondent's auto, which is a goods vehicle. Hence, the Tribunal, on scrutiny of oral and documentary evidences, held that the claimants are not entitled to any compensation from the respondents and hence dismissed the claim.

10. Aggrieved by the said order of dismissal, the claimants have preferred the present civil miscellaneous appeal.

11. The learned counsel appearing for the appellants has contended in the appeal that the Tribunal had failed to consider that the deceased was travelling as the owner of goods in the auto and that the Tribunal failed to consider that even if there is any violation of policy conditions, the Tribunal ought to have directed the insurance company to pay the award amount and recover the same from the owner of the vehicle.

12. It is also contended that as the deceased was a third party and as there was a valid insurance policy for the vehicle involved in the accident, the rights of third party should not be affected as the contract of insurance is only between the owner and the insurer of the vehicle. Hence, it is prayed to set aside the order of the Tribunal and to grant compensation of Rs.10,00,000/- to the appellants/claimants.

13. The learned counsel for the Insurance Company has vehemently argued that the owner of the auto had remitted premium only to cover the risk of the driver. As per evidence of P.W.3, who is an eye-witness, it is seen that five members had travelled in the said Auto and as such there is a breach of policy conditions and therefore the Insurance Company is not liable to pay any compensation.

14. On verifying the factual position of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Tribunal, this Court is of the view that the deceased Dayalan had expired due to injuries sustained in the accident, which had been caused by the negligent driving of the driver of the Auto and that FIR had also been registered against him and he had been punished before the Criminal Court, as per documentary evidence.

15. It is also seen that the deceased had travelled as owner of wooden and iron goods and that he is the third party as far as contract of insurance is concerned and as such the claim made by the claimants cannot be rejected. Now, the claimants are seeking a sum of Rs.3,00,000/- as compensation. This claim is reasonable and hence, this Court is inclined to grant the same and as such this

Court directs the second respondent herein Insurance Company to deposit a sum of Rs.3,00,000/- as compensation, with interest at the rate of 7.5% per annum, from the date of filing the claim petition till the date of payment of compensation, to the credit of M.C.O.P.No.81 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court, Vellore, within a period of four weeks from the date of receipt of a copy of this Judgment. However, the Insurance Company is permitted to recover the compensation amount from the owner of the vehicle in the same proceedings.

16. After such a deposit having been made, the learned Additional District and Sessions Judge, Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court, Vellore, shall disburse the said compensation to the claimants, on the basis of the legal heir certificate and as per the ratio decided by him, lying in the credit of M.C.O.P.No.81 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court, Vellore, after the claimants file a memo, along with a copy of this Judgment.

17. In the result, this civil miscellaneous appeal is allowed and the Judgment and decree dated 22.02.2007, made in M.C.O.P.No.81 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court, Vellore, is set aside. No costs. 01.10.2013 Index : Yes/No Internet : Yes/No krk To:

1. The Additional District and Sessions Judge Motor Accident Claims Tribunal Additional District and Sessions Court Fast Track Court, Vellore 2.The Section Officer V.R.Section, High Court Madras C.S.KARNAN, J.

krk C.M.A.No.2436 of 2007 01.10.2013