SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Jayalakshmi Vs. Ganapathy

Jayalakshmi Vs. Ganapathy

SooperKanoon Citation : sooperkanoon.com/1169637

Court : Chennai

Decided On : Nov-05-2013

Judge : C.S.Karnan

Appellant : Jayalakshmi

Respondent : Ganapathy

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

05. 11.2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN C.M.A.No.369 of 2004 1.Jayalakshmi 2.Minor.Vinoth 3.Muthammal ... Appellants (minor 2nd appellant rep.by his next friend 1st appellant Jayalakshmi) Vs. 1.Ganapathy 2.The Branch Manager National Insurance Co., Ltd., Dharmapuri ... Respondents PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.07.2002, made in M.A.C.T.O.P.No.330 of 2001, on the file of the Motor Accident Claims Tribunal, Special Additional Court, Dharmapuri. For Appellants : Mr.V.Kumaravelan For Respondents : Mrs.D.Kamatchi for R1 Mrs.R.Sreevidhya for R2 - - -

JUDGMENT

The appellants / claimants have preferred the present appeal against the judgment and decree dated 04.07.2001, made in M.A.C.T.O.P.No.330 of 2002, on the file of the Motor Accident Claims Tribunal, Special Additional Court, Dharmapuri.

2. The short facts of the case are as follows:- The claimants, who are the wife, son and mother of the deceased Devarajan, had filed a claim petition in M.A.C.T.O.P.No.330 of 2002, on the file of the Motor Accident Claims Tribunal, Special Additional Court, Dharmapuri, claiming a sum of Rs.5,78,000/- as compensation from the respondents for the death of the said Devarajan in a motor vehicle accident.

3. It was submitted that on 02.03.2001, at about 07.30 p.m., when the first claimant's husband Devarajan was driving a tractor bearing registration No.TN29 3810, from Chinnavathalapuram to one Patchiannan's land, he lost his control and as a result, the tractor toppled down. As a result, he had sustained grievous injuries and succumbed to it. Hence, the claimants had filed the claim petition against the respondents, who are the owner and insurer of the tractor bearing registration No.TN29 3810.

4. The first respondent, who is the owner of the tractor, had filed a counter affidavit and admitted that the deceased had driven the tractor bearing registration No.TN29 3810, on 02.03.2001. Further, it was submitted that when the vehicle was proceeding from Chinnavathalapuram towards Patchiannan's land, the tractor toppled down and the deceased Devarajan was caught under the vehicle and died on the spot. The deceased was paid a sum of Rs.4,500/- per month as salary, besides daily batta and he was having a valid driving license. The vehicle was insured with the second respondent Insurance Company.

5. The second respondent Insurance Company had filed a counter affidavit and resisted the claim petition. They had submitted that the accident had taken place in a private land. As such, they are not liable to indemnify the first respondent. Further, they had denied the averments made in the claim petition that the deceased was a driver under the first respondent. As per the claimants, they have to claim compensation under the Workmen's Compensation Act. Further, it was submitted that as per the F.I.R., it is evident that the tractor was used for the land

of one Patchiannan for commercial purpose, which is in violation of the policy conditions. The averments made in the claim petition regarding age, income and occupation of the deceased were not admitted. Further, as per the statement of the claimants, the accident had been committed by the negligence of the deceased.

6. On considering the averments of both sides, the Tribunal had framed four issues for consideration namely: i. Is it true that the deceased Devarajan, who was a driver of the tractor bearing registration No.TN29 3810, was under the employment of the first respondent as a driver?. ii. Whether the accident happened at the public place or at the private agricultural land?. iii. Whether the deceased was possessing a valid driving license at the time of accident?. and iv. Whether the claimants are entitled to get compensation?. If so, what is the quantum of compensation?.

7. On the side of the claimants, two witnesses were examined as P.Ws.1 and 2 and five documents were marked as Exs.P1 to P5 namely F.I.R., postmortem report, insurance policy, driving license of the deceased and R.C., Book. On the side of the respondents, one Ulaganathapillai was examined as R.W.1 and two documents were marked as Exs.R1 and R2 namely insurance policy and enquiry report.

8. P.W.1 had adduced evidence that she is the wife of the deceased and the second claimant is the son of the deceased and that the third claimant is the mother of the deceased. She deposed that on 02.03.2001, at about 07.30 p.m., when her husband was driving the tractor bearing registration No.TN29 3810, from Chinnavathalapuram towards Patchiannan's land and while the tractor was proceeding down the incline of the road, the tractor had capsized and the deceased was caught under the vehicle, due to which he sustained injuries and succumbed to it. Further, she had adduced evidence that her husband was paid a sum of Rs.4,500/- per month as salary.

9. P.W.2 had adduced evidence that the deceased was a driver and he had expired in the motor accident, while he was driving the tractor.

10. R.W.1 had adduced evidence that the deceased and the first respondent lived as joint family. Further, the deceased was not working as a driver under the first respondent, who was his father.

11. On considering the evidence of the witnesses, the Tribunal had observed that the tractor stands in the name of the first respondent, who is the father of the deceased and as such opined that the deceased was not working as a driver under his father as alleged. The Tribunal further, on observing that the accident took place at a private agricultural land and hence dismissed the claim. Further, the Tribunal observed that the deceased was not a third party.

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

13. The learned counsel appearing for the appellants has vehemently argued that the deceased Devarajan had expired in the accident, which took place on 02.03.2001, while he was driving the tractor bearing registration No.TN29 3810 belonging to the first respondent. The deceased and the first respondent are not joint owners of the said tractor. The deceased had possessed a valid driving license at the time of accident and the said tractor was insured with the second respondent herein. The deceased and his family members were living separately and the deceased was the breadwinner for his family consisting of his wife and son. The first respondent is the father of the deceased, but the deceased was working under the employment of his father, who is the first respondent and he was paid a monthly salary. Further, the highly competent counsel has argued that the accident had happened on the public road, while the tractor was proceeding from the road towards a private land.

14. The learned counsel appearing for the first respondent has submitted that the deceased was paid a sum of Rs.4,500/- per month as salary and that at the time of accident, the deceased was possessing valid driving license and the said tractor had been insured with the Insurance Company. Actually, the tractor was proceeding from Chinnavathalapuram road and when it was proceeding down an incline, the vehicle was toppled. As a result, the deceased had succumbed to his injuries. It is an admitted fact that the first respondent and the deceased are

related as father and son and also connected as owner and driver.

15. The very competent counsel for the Insurance Company has argued that the vehicle had been used for commercial purpose at the Patchiannan's agricultural land and the accident had taken place in the said land, which is a private land. Further, he has argued that as per the policy conditions, the claimants are not entitled to get any compensation. He has argued further that even as per the F.I.R., the manner of accident had been clearly shown. The first respondent and the claimants had colluded with each other and filed the claim petition. The Tribunal had rightly dismissed the claim petition after assigning valid reasons.

16. 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 as per the evidence of the witnesses, the tractor was proceeding from Chinnavathalapuram road towards a private land and that the accident had occurred while the tractor was going down an incline. The same was not denied and even the rough sketch was not marked by the respondent, who is also responsible to produce the said document i.e., rough sketch, which is a common document available on the file of the Traffic Investigation Officer. This Court is of the further view that at the time of accident, the vehicle was insured with the second respondent Insurance Company. Further, no evidence had been let in by the respondents' side to show that the accident had not happened due to any negligence of the deceased. The contention of the Insurance Company is that the first respondent and the deceased are related as father and son and therefore no employer-employee relationship had existed between them is not justified in the instant case. Therefore, this Court is inclined to grant compensation to the claimants.

17. This Court, on taking the notional income of the deceased as Rs.3,000/- per month awards a sum of Rs.3,84,000/- as compensation under the head of loss of earning (3000 X12X16X23), Rs.10,000/- is awarded to the first claimant under the head of loss of consortium, Rs.10,000/- is awarded to each of the claimants 2 and 3 under the head of loss of love and affection, Rs.10,000/- is awarded for funeral expenses and Rs.10,000/- is awarded for transport expenses. In total, this Court

awards a sum of Rs.4,34,000/- as compensation to the claimants as it is found to be appropriate in the instant case. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation.

18. This Court directs the second respondent Insurance Company to execute this Court's Judgment, by way of depositing the compensation amount to the credit of M.A.C.T.O.P.No.330 of 2001, on the file of the Motor Accident Claims Tribunal, Special Additional Court, Dharmapuri, within a period of four weeks from the date of receipt of a copy of this Judgment.

19. Further, this Court apportions a sum of Rs.1,34,000/- to the first claimant, Rs.2,00,000/- to the second claimant namely minor Vineeth and a sum of Rs.1,00,000/- to the third respondent, with proportionate interest thereon.

20. After such a deposit having been made, it is open to the first and third claimants to withdraw their apportioned share amount, as stated above, with proportionate interest thereon, lying in the credit of M.A.C.T.O.P.No.330 of 2001, on the file of the Motor Accident Claims Tribunal, Special Additional Court, Dharmapuri, after filing a memo along with a copy of this Judgment.

21. Further, this Court directs the learned Special Additional Judge, Motor Accident Claims Tribunal, Special Additional Court, Dharmapuri, to deposit the minor claimant's share amount, with proportionate interest thereon, in a nationalized bank as fixed deposit under the cumulative deposit scheme, until such time the minor claimant attains the age of a major and hand over the fixed deposit certificates to the mother of the minor claimant.

22. In the result, this civil miscellaneous appeal is partly allowed and the Judgment and decree dated 04.07.2002, made in M.A.C.T.O.P.No.330 of 2001, on the file of the Motor Accident Claims Tribunal, Special Additional Court, Dharmapuri, is modified. No costs. 05.11.2013 Index : Yes/No Internet : Yes/No krk To:

1. The Special Additional Judge Motor Accident Claims Tribunal Special Additional Court, Dharmapuri 2.The Section Officer V.R.Section, High Court Madras

C.S.KARNAN, J.

krk C.M.A.No.369 of 2004 05.11.2013

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com