

(2015) 08 MAD CK 0106

In the Madras High Court

Case No : C.M.A. (MD) No. 581 of 2013 and M.P. (MD) No. 1 of 2013

New India Assurance Company Limited

APPELLANT

Vs

U. Karmegam and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Citation : (2015) 7 MLJ 805

Hon'ble Judges : R. Sudhakar and V.M. Velumani, JJ.

Bench : Division Bench

Advocate : D. Sivaraman, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

V.M. Velumani, J.—The Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 24.07.2012 passed in MCOP. No. 1644 of 2008 on the file of the Motor Accident Claims Tribunal - District and Sessions Court (Special Court for Communal Clashes), Madurai. Appellant, Insurance Company is the second respondent in MCOP. No. 1644 of 2008. The respondents 1 to 4 filed the said petition claiming compensation for the death of one Santhanakumar, son of respondents 1 and 2 and brother of respondents 3 and 4. Fifth respondent is the owner of Mini Lorry involved in the accident.

2. According to the respondents 1 to 4, the deceased Santhanakumar was driving his motorcycle on 28.03.2013 at 8.15 pm. At that time, Mini Lorry - Tata 407 - bearing Registration No. TN 63B 4125 belonging to the fifth respondent was parked in the right side without any parking light or indicator. The deceased dashed behind the backside of Mini Lorry and died due to the injuries sustained by him in the said accident. According to the respondents 1 to 4, accident took place only due to negligence on the part of the driver of Mini Lorry. The deceased was working as Teacher in Panchayat Union Elementary School and was earning a sum of Rs. 7,031/-. Therefore, they claimed a sum of Rs. 12,00,000/- as compensation.

3. Appellant filed counter statement denying the plea of the claimants that the accident took place only due to rash and negligent driving by driver of Mini Lorry, however, stated that it was only because of the deceased. First Information Report was lodged only against the deceased. After his death, it was not proceeded further. The appellant also stated that deceased had only Learner's licence and drove the vehicle in violation of Motor Vehicle Rules. Insurance Policy for Mini Lorry was in the name of one K. Kadappan. On the other hand, in the claim petition, owner of Mini Lorry has been shown as Kathiravan, fifth respondent herein. The fifth respondent had not insured the vehicle with the appellant and therefore, appellant is not liable to pay any amount and therefore, prayed for dismissal of claim petition.

4. Before the Tribunal, first respondent examined himself as P.W. 1 and M. Nagaraj and Vasantha Pandi were examined as P.W. 2 and P.W. 6 and officials from employer of deceased was examined as P.W. 3, Assistant in Billing Section of Apollo Hospital was examined as P.W. 4 and Siva Rama Krishnan in billing Section was examined as P.W. 5 and 14 documents were marked as Exs. A1 to A14. Appellant examined one Selvaraj as D.W. 1 and marked 2 documents as Ex. B1 and B2 then 2 documents were marked as Exs. C1 and C2 as Court Exhibits.

5. The Tribunal considering the pleadings and evidence came to the conclusion that accident took place due to rash and negligent driving by driver of Tata Mini Lorry and the same was validly insured with the appellant. As far as quantum is concerned, Tribunal taking into consideration the age of the first respondent applied multiplier of 13 as per the Judgment reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and awarded total compensation of Rs. 11,68,299/-.

6. Against the said Judgment, the appellant has filed the present appeal.

7. The learned counsel for the appellant contended that, (i) Tribunal failed to hold that accident took place only due to rash and negligence of the deceased and therefore, appellant is not liable to pay any compensation; (ii) Tata Mini Lorry was parked in the left hand side of the road and deceased only dashed behind backside of the Mini Lorry due to his rash and negligent driving; (iii) the deceased was possessing only a Learner's driving licence and was driving vehicle contrary to Rule 3 of Central Motor Vehicles Rules; (iv) First Information Report was registered only against the deceased and charges were dropped after the death of the deceased. No charge sheet was filed against the driver of Tata 407 Mini Lorry; (v) the Mini Lorry was insured with the appellant by one Kadappan showing him as owner, whereas in the claim petition one Kathiravan was shown as owner who had not insured the vehicle with the appellant; (vi) neither Kadappan nor Kathiravan informed the appellant about the transfer of ownership and no name transfer was effected.

8. The learned counsel for the appellant relied on following Judgments:

(i) Managing Director, BMTC v. Union of India and Another 2008 (2) TNMAX 530

(SC)

(ii) Raj Rani and Others Vs. Oriental Insurance Co. Ltd. and Others, and he argued that due to contributory negligence by deceased, the accident took place and hence, appellant is not liable to pay compensation.

9. We have heard the learned counsel appearing for appellant and perused the materials on record. Though notice was served on the respondents and their names are printed in the cause list, they have not chosen to appear either in person or through counsel.

10. The respondents 1 to 4 in the claim petition have stated that Mini Lorry was parked on the left side of the road without parking light and without any indication that Lorry was parked therein. Therefore, accident took place only due to negligence on the part of the driver of the Mini Lorry and accident did not took place due to rash and negligent driving of the deceased.

11. From the records, it is seen that the respondents 4 to 6 have examined two eye witnesses to prove that Mini Lorry was parked in the night without any parking light and there was no indication that said vehicle was parked therein. The accident did not take place due to rash and negligent driving by deceased. The appellant has not let in any contra evidence.

12. The Tribunal considering the evidence of P.W. 2 and P.W. 6 have concluded that accident took place only due to negligence on the part of the driver of Mini Lorry.

13. The finding of the Tribunal is that the accident had occurred due to the stationary vehicle on the Highway and that was insured with the appellant Insurance Company.

14. We find that the finding of fact rendered by the Tribunal is now challenged. The decision of the Hon"ble Supreme Court in Raj Rani and Others v. Oriental Insurance Company Ltd. and Others (supra) will apply to the facts of this case.

15. Though on facts, it is found that, in that case, the truck was parked on the middle of the road and the deceased was trying to overtake the vehicle, the Tribunal has fixed contributory negligence. In the present case, the Tribunal did not come to the conclusion that there was contributory negligence on the part of the deceased. Furthermore, the evidence of P.W. 2 and P.W. 6, makes it clear that the accident had occurred due to the parking of vehicle on the highway and without blinking parking lights. The said issue was considered by one of us (R. Sudhakar, J.), in United India Insurance Company Limited, Ranipettai v. Sundaram and Others 2007 (2) TN MAC 518 : LNIND 2007 MAD 2287 : (2007) 5 MLJ 952, wherein it has been held that when the vehicles were parked without parking lights and abstracting free flow of Traffic, negligence can be fastened on the driver of the vehicle. The relevant para 11 and 12, reads as follows:

"11. The evidence on record, viz., that of P.W. 2 the eye witness and the

statement in FIR clearly go to show that the deceased was traveling on the left side of the road. It is not even suggested that the deceased in this case has gone astray and hit the rear side of the parked lorry. It, therefore, leads to the one and only conclusion that the lorry was parked without rear danger light on the national highway and it was obstructing the free flow of traffic and this was the cause of accident in which the deceased died.

12. The appellant on the contrary did not rebut the stand of the claimants, particularly, the evidence of P.W. 2 in the manner known to law. Therefore, the decision of the Division Bench relied on by the learned counsel for the appellant on facts will not apply to the facts of the present case."

16. We are in agreement with the said decision. The other decision relied upon by the learned counsel for the appellant is, *Managing Director, B.M.T.C. v. United of India and Another* 2008 (2) TN MAC 530 (SC), does not apply, as in that case, the finding of the Tribunal is that the claimant was driving the vehicle in a rash and negligent manner and that was upheld by the Hon'ble Supreme Court. There was a claim and counter claim of rash and negligent driving by two vehicles. That are the facts distinguishable in the facts of the present case. Accordingly, we find no merit in the appeal. Hence, this civil miscellaneous appeal is dismissed. No costs. Consequently, M.P. (MD) No. 1 of 2013 is dismissed.