IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 726 of 2015
&
M.P. No. 1 of 2015

National Insurance Co. Ltd.,
Paramathi Road,
Namakkal. ..Appellant/2nd Respondent

Vs.

1. Kondayammal
2. Thangavel
3. Pavayee
4. Kandasamy ..Respondents/Petitioners/1st Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 23.07.2010 passed in M.C.O.P. No. 86 of 2008 by the Motor Accidents Claims Tribunal (Sub Court), Sankari.

For Appellant :: Mr.S. Arunkumar

For Respondents:: Mr.C. Kulandaivelu for R1 to R3
R4 Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company questioning the liability fastened on them with regard to payment of the award amount of Rs.3,79,000/- for the death of one Sengodan, aged about 56 years, a loadman, claimed to have earned Rs.5000/- per month, in the accident, which occurred on 25.12.2007.

2. Heard Mr.S. Arunkumar, learned counsel for the appellant and Mr.C. Kulandaivelu, learned counsel for respondents 1 to 3. Since the 4th respondent remained ex parte before the Tribunal, notice to the 4th respondent is dispensed with.

3. Learned counsel for the appellant would argue that the vehicle involved in the accident is a transport vehicle and the

driver, who drove the vehicle, had only an LMV licence and did not possess a badge to drive the transport vehicle, which would amount to violation of policy condition, and therefore, the Tribunal, should have ordered pay and recovery, but, wrongly directed the appellant to pay the amount.

4. A perusal of the records would show that the appellant, in paragraph No.3 of their counter affidavit, filed before the Tribunal, had stated that the driver, who drove the Light Motor Vehicle, had no valid and effective driving licence to drive the vehicle in question and that he did not get badge endorsement in his driving licence to drive the transport vehicle. In this regard, the appellant examined R.W.s 1 and 2 to show that the vehicle involved was a transport vehicle; that the driver of the vehicle was issued only with an LMV driving licence and that he did not get badge endorsement in his licence to drive the transport vehicle. Further, the owner of the vehicle remained ex parte. In such circumstances, the Tribunal should have drawn an adverse inference, in the absence of any evidence on behalf of the owner that the driver of the vehicle had got badge endorsement to drive the transport vehicle. Moreover, it is categorically proved by the appellant by examining R.W.1 and 2 that the driver of the vehicle did not have a badge. The finding reached by the Tribunal, in this regard, is based on the evidence of R.W.s 1 and 2, who stated that if the vehicle had been driven for personal use, then there was no necessity to get any badge endorsement. On the other hand, if it had been used as a transport vehicle, then badge endorsement should have been obtained. The liability was erroneously fastened on the Insurance Company stating that it failed to produce the trip sheet, which is in the possession of the owner. When the owner remained ex parte, an adverse inference should have been drawn against the owner and not against the Insurance Company. Therefore, it is clear that there is violation of policy condition and in that event, the appellant cannot be fastened with the liability. Hence, this Court holds that for violation of policy condition, the owner of the vehicle alone is liable to pay the compensation amount. However, as per settled law that in case of violation of policy condition, the Insurance Company has to pay the amount and thereafter, recover the same from the owner, namely, the 4th respondent herein, as the victim is a third party. Therefore, the award passed by the Tribunal is modified to the extent indicated above.

5. The appellant Insurance Company is directed to deposit the entire award amount, together with interest and costs, after deducting the amount, if any, already deposited before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants/respondents 1 to 3 are permitted to withdraw their respective shares, within a period of one week thereafter. It is open to the appellant to take steps to recover the amount from the owner of the vehicle, the 4th respondent herein.

6. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Connected M.P. is closed.

nv

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The MACT (Sub Court), Sankari.

+ 1 cc to Mr.S.Arunkumar, Advocate SR 19208

+ 1 cc to Mr.C.Kulanthaivel, Advocate SR 19126

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prk1/6

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