IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.9.2015

C O R A M

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

C.M.A. NOS. 671 OF 2008 AND 562 OF 2009
and
M.P.Nos. 1 of 2008 and 1 of 2009

1. Elumalai ...Appellant in CMA.No.671 of 2008/R1

2. The Divisional Manager
National Insurance Company Limited
Pondicherry ...Appellant in CMA No.562 of 2009
and 4th respondent in CMA.No.671 of 2008/R2

Vs

1. Murugan
2. Manickam
3. Tamilselvi ...R1 to R3 in CMA NO. 671 of 2008/
Claimants

1. Renu (deceased)
2. Murugan
3. Manikkam
4. Tamilselvi
5. A.Elumalai ...Respondents in CMA.No.562 of 2009/
Claimants/R1

Prayer : Appeals filed under Section 173 of the Motor Vehicles Act 1988 against the award and decree dated 16.4.2007 made in M.A.C.T.O.P No.407 of 2005 on the file of the Motor Accidents Claims Tribunal, (Sub Court) Gingee.

For Appellant in
CMA No.671 of 2008
& R4 in CMA 562 of 2009 : Mr. A.Baskaran

For R1 to R3
in CMA.No.671 of 2008 and
For R1 to R3 in
CMA.No.562 of 2009 : Mr. M.R.Sivakumar

For Appellant in
CMA.No.562 of 2009 and
For R4 in
CMA.No.671 of 2008 : Mr. D.Baskaran

COMMON JUDGMENT

Both the appeals have been preferred challenging the Award dated 16.4.2007 passed by the Motor Accidents Claims Tribunal granting a sum of Rs.8,50,000/- as compensation as against the claim of Rs.10,00,000/-in respect of death of the person caused in the accident that took place on 19.5.2004. The owner of the vehicle is the appellant in CMA.No.671 of 2008 and the Insurance company is the appellant in CMA.No.562 of 2009.

2. The learned counsel for the appellant / owner in C.M.A.No.671 of 2009 would contend that since both the tractor and trailor were insured with the appellant / Insurance Company in C.M.A.No.562 or 2009, the appellant/ insurance company in C.M.A.No.562 of 2009 is liable to pay the amount. The learned counsel would also contend that the since the Insurance company pointed out certain discrepancies in the policy, the appellant/owner has voluntarily agreed to pay 35% of the award amount.

3. The main contention of the learned counsel for the appellant/Insurance company in CMA.No.562 of 2009 was that only the trailor was insured and the tractor was not insured. According to the learned counsel, the accident took place in the tractor wherein the deceased and others were travelling along with goods at the time of accident. As per the policy, persons cannot travel in the tractor. Therefore, the Insurance company is not liable for the same.

4. The learned counsel for the claimants submitted that the Court below, after taking into consideration the entire evidence, has rightly awarded the compensation. The learned counsel for the claimants further submits that the amount may be disbursed to the claimants early.

5. Heard the learned counsel appearing on either side and perused the materials available on record. Considering the peculiar circumstances of the case, this order is passed in this

particular case alone and the same will not be taken as a precedent.

6. In these cases, the Insurance company as well as the owner has questioned only the liability and they have not questioned the quantum.

7. Normally, the owner of the vehicle will not appear before the Court for repenting his mistake. In the preset case, the owner has also come forward with the appeal.

8. Insofar as the question of liability is concerned, the only contention raised by the Insurance Company is that since the deceased was travelling in the tractor, which was not insured, as per the policy, he is not eligible for any compensation. But it is the contention of the appellant/owner in CMA.No.671 of 2009 that both the tractor and the trailor were insured and the persons, who travelled were also the owner of the goods. However, he would contend that instead of entire amount, he is prepared to pay 35% of the award amount.

9. On a perusal of the entire records, it is clear that the tractor was not insured and only the trailor was insured. Therefore, the Court below is right in directing the insurance company to pay and recover the same from the owner. Even though the argument of the learned counsel for the Insurance company that the Insurance Company is not liable to pay is correct, considering the peculiar circumstances of the case, I am inclined to direct the Insurance company to deposit 60% of the amount instead of 100% as awarded by the court below.

10. Accordingly, the Appellant/ Insurance company in C.M.A.No.562 of 2009 is directed to deposit 60% of the award amount along with interest and the remaining 40% along with interest shall be deposited by the appellant/ Owner in C.M.A.No.671 of 2008. It is represented by the appellant insurance company in C.M.A.No.562 of 2009 that they have already deposited the entire award amount. In view of the same, the appellant/Insurance Company is permitted to withdraw the remaining 40% of the amount along with accrued interest lying in the credit of M.A.C.T.O.P.No. 407 of 2005 on the file of the Motor Accidents Claims Tribunal (Sub Court), Gingee. The appellant/ owner in C.M.A.No. 671 of 2008 is directed to deposit 40% of the award amount within a period of eight weeks from the date of receipt of a copy of this order.

11. On such deposit, the claimants are permitted to withdraw their respective share as apportioned by the Court below, less the amount already withdrawn, if any.

12. With the above modification, the appeals are partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Subordinate Judge,
Gingee.

Copy to

The Section Officer,
V.R.Section, High Court,
Madras.

1 CC to Mr. A.Baskaran, Advocate SR.No. 52780

C.M.A. Nos.671 of 2008
and 562 of 2009

KSJ (CO)
PSI (29.10.2015)