

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.853 of 2004

1. Selvam
2. Velankanni
3. Sagayanathan
- 4.Chinnappan.

... Appellants/Claimants

Vs.

- 1.Devagi

2. The United India Insurance Company Ltd.,
Thiruvannamalai. ... Respondents /Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles (Amendment) Act, 1994, against the order and decreetal order dated 19.09.2003 made in M.V.A.C.O.P.No.612 of 1997 on the file of the Motor Accidents Claims Tribunal and District Judge, Thiruvannamalai.

For Appellants : Mr.R.Thirugnanam

For Respondents : No appearance

JUDGMENT

The claimants in M.V.A.C.O.P.No.612 of 1997 before the Motor Accidents Claims Tribunal [District Judge], Thiruvannamalai, have come forward with this appeal, challenging the award, whereunder, the second respondent/the Insurance Company was absolved of liability to pay the compensation.

2. On 03.06.1997, a lorry belonging to the first respondent and insured with the second respondent-Insurance Company, dashed against a two wheeler, owing to which one Abraham who was travelling as a pillion rider died. His legal representatives preferred a claim before the MACT seeking a total compensation of Rs.2,00,000/-, as against which, the Tribunal determined the total compensation payable at Rs.2,19,000/-, but still restricted the award amount to what was actually claimed i.e. Rs.2,00,000/-.

3. Before the Tribunal, the first respondent/the owner of

the vehicle remained ex-parte and the second respondent alone contested the matter. It was contended before the Tribunal that the policy was issued to the owner of the vehicle on 13.05.1997 and the premium was received by way of cheque dated 13.05.1997, but it later dishonoured and therefore, it was not liable to meet the liability arising out of the accident that took place on 03.06.1997. The said contention was accepted by the Tribunal. As a result, it exonerated the Insurance Company of its liability to pay the compensation amount determined by the Tribunal. Hence this appeal.

4. The learned counsel took this Court through Ext.R-1, the policy, Ext.R-2, the copy of the proceedings by which the Insurance Company cancelled the policy, and also Ext.R-6, the communication by which the Insurance company conveyed the cancellation of policy to the owner of the vehicle.

5. Ext.R-1 shows that the policy was to take effect at 11.00 a.m. on 13.05.1997 and was to expire in the midnight of 12.05.1998. It is not in dispute that as per Ext.R-2 this policy was cancelled on 04.06.1997, the date next to the date of accident involved in this case. Thirdly, the very communication (Ex.-R6) by which the Insurance Company said to have informed the owner about the cancellation of policy is dated 11.06.1997. The relevant dates and events as referred to above only show that as on the date of accident, the Insurance Policy was still subsisting. Inasmuch as the policy was in subsistence on the date of accident i.e., on 03.06.1997, the Tribunal should have held that the Insurance Company too was jointly and severally liable along with the owner of the vehicle to pay the compensation. Before this Court, in spite of service of notice, the Insurance Company preferred not to appear and contest the matter.

6. To conclude, the appeal is allowed and both the owner of the vehicle and the Insurance Company shall jointly and severally pay the compensation as determined by the Tribunal, with pendent lite interest at 9% from the date of claim petition till actual deposit is made in the Tribunal and the same shall be deposited before the Tribunal within four weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw the said sum forthwith. No costs.

sd/

Assistant Registrar (CS V)

/true copy/

Sub Assistant Registrar

kmi

To:

1. The District Judge,
Motor Accidents Claims Tribunal,
Thiruvannamalai.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.R.Thirugnanam, Advocate SR.No.73598

C.M.A.No.853 of 2004

KJI (CO)
GN(03/03/2017)



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