

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.Nos.1668 & 1669 of 2001
and CMA.No.422 of 2002

CMA.No.1668 of 2001

The Oriental Insurance Co. Ltd.,
Chennai.

...Appellant/2nd
Respondent

Vs.

1.Mookan

...1st Respondent/Claimant

2.Kumaran Transports

Proprietor K.Selvaraj
154, Coral Merchant Street,
Chennai-1.

...2nd Respondent/1st
respondent

CMA.No.1669 of 2001

The Oriental Insurance Co. Ltd.,
Chennai.

...Appellant/2nd Respondent
Vs.

1.Mookan

2.Sivakumaran

3.Minor Jayam ...Respondents 1 to 3/Claimants 1 to 3
(Minor represented by her father 1st respondent)

4.Kumaran Transports

Proprietor K.Selvaraj
154, Coral Merchant Street,
Chennai - 1,

... 4thRespondent/1st respondent

CMA.No.422 of 2002

The Oriental Insurance Co. Ltd.,
Chennai.

... Appellant/4th Respondent
Vs.

1.P.Raja

...1st Respondent/Claimant

2.Selvaraj

Prop.Thirukumaran Transports
No.121, G.S.T. Road,Chengalpet

3.Chettianna Gounder

4.United India Insurance Co. Ltd.,

137, Cherry Road, Salem. ..Respondents 2 to 4/Respondents
1 to 3

Prayer in CMA.No.1668 of 2001: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 30.04.2001 made in MACT.OP.No.26 of 2001 on the file of the Motor Accident Claims Tribunal, Sub-Court, Madurantakkam.

Prayer in CMA.No.1669 of 2001: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 27.04.2001 made in MACT.OP.No.27 of 2001 on the file of the Motor Accident Claims Tribunal, Sub-Court, Madurantakkam.

Prayer in CMA.No.422 of 2002: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 31.07.2001 made in MACT.OP.No.68 of 2000 on the file of the Motor Accident Claims Tribunal, Sub-Court, Madurantakkam.

For Appellant :Mr.S.Arun Kumar
(in all CMAs)

For Respondents :No Appearance for R1 &2
(in CMA.No.1668 of 2001)

For Respondents :No Appearance for R1 to 4
(in CMA.No.1669 of 2001)

For Respondents :Mr.S.Gunaseelan [R1]
(in CMA.No.422 of 2002) Mr.T.Ravichandran [R4]
No Appearance for R2
R3 dismissed vide order
dt.14/6/16

COMMON JUDGMENT

In a road accident that took place on 26.02.1993 involving two lorries, one lorry bearing registration No.TN-U-1065 driven by one Raja (driver) having two inmates in it, while proceeding from Villupuram to Chennai, a lorry bearing registration No.TN04-A-7778 owned by one Kumaran Transport, driven rashly and negligently hit against it. In the said accident, of the two inmates one Palaniammal died and Mookan, husband of Palaniammal, and Raja, the driver of the lorry suffered injuries. The victims or the legal representatives of the deceased as the case may be, moved the Tribunal vide MCOP.No.26 of 2001, MCOP.No.27 of 2001 and MCOP No.68 of 2000, as against the owner of the offending lorry and the appellant/Insurance Company. After considering the claims, the Tribunal has passed an award in all the cases.

2. One of the defences taken by the Insurance Company in its counter was that the driver of the offending lorry had only a valid driving licence to drive light motor vehicle and not a heavy motor vehicle such as lorry. The Tribunal however, has

found the Insurance Company liable even though it had noted that the particulars of licence details as was provided by the owner of the vehicle in his claim (Ext.R2) made to the Insurance Company discloses that the driver of the offending lorry had only a licence to drive light motor vehicle, but proceeded to hold that since the Insurance Company had not adequately investigated the matter to note if the driver had subsequently obtained valid licence to drive heavy vehicles.

3. Heard both sides. The learned counsel for the appellant essentially contended that even the owner of the offending vehicle had not stated that his driver at that relevant time had a valid licence to drive the lorry. Subsequent to that the Insurance Company or its counsel or its investigator had written several communications to the owner of the vehicle to provide the licence details of the driver as to if he had a valid licence to drive the heavy vehicle. These correspondences are Ext.R2 to Ext.R7. Still what was sought was not shown to exist.

4. After evaluating the evidenciary material on record I have little hesitation to conclude that the Tribunal has shifted the entire burden on the insurance company and expected it to perform the impossible as it insisted it to prove the negative of what it pleaded. After all, it is the responsibility of the insured to provide the details of the driving licence of his driver, and the details that he had provided in the instant case indicate that his driver at that relevant time had only a licence to drive light motor vehicle and not a lorry. The Court is not looking for proof of a disputed fact beyond all reasonable doubt but a proof dictated by rule of probability.

5. In conclusion, I hold the driver of the offending vehicle did not shown to possess a valid driving licence to drive the lorry. However, that cannot absolve the insurance company of its liability entirely. In a situation such as one at hand doctrine of 'pay and recover' would come to play and accordingly the insurance company would be under an obligation to pay the compensation at the first instance in all the three cases and thereafter to recover the same from its owner.

6. In the result all these appeals are partially allowed but without costs. The learned counsel for the appellant submitted that the entire compensation amount in all the three cases has already been deposited. The appellant/Insurance Company would be free to realise the same from the owner of the vehicle in the same proceedings. The claimants are permitted to withdraw the amount in deposit if they have not withdrawn it already.

Sd/-

Asst.Registrar (CS VI)

/true copy/

To

1.The Motor Accident Claims Tribunal,
Sub Court,
Madurantakkam.

+3ccs to Mr.S.Arun Kumar,Advocate sr.5419 to 5419

+1cc to Mr.S.Gunaseelan,Advocate sr.5179

CMA.Nos.1668 & 1669 of 2001
and CMA.No.422 of 2002

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ss(4/4/2017)



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