

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2017

CORAM : THE HONOURABLE MR. JUSTICE N.SESHASAYEE

CMA.No.3478 of 2004
and CMP.18926 of 2004

New India Assurance Co. Ltd.,
Branch Office,
Hoshpet,
Bellary District,
Karnataka State.

...Appellant/2nd Respondent

Vs.

1.C.Narasimaiya

2.Rathinammal

...Respondents 1&2/Claimants 1&2

3.Suresh Pandikar

(R3 - Exparte in lower Court) ...3rd Respondents/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 13.07.2004 passed in MCOP.No.263 of 1999 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Krishnagiri.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.A.Muthuraman [for R1 & R2]
R3 - Exparte

JUDGMENT

A male child aged 6 years was fatally ran over by an Ambassador Car bearing Registration No.KA03-M-3323 on 19.06.1995, and claiming compensation his parents moved the Tribunal with a claim of Rs.1,00,000/- and the Tribunal has passed an award for Rs.1,67,000/-. This liability was fastened jointly and severally on the owner and the purported insurer of the said vehicle.

2. Before the Tribunal the Insurance Company /appellant herein has taken up a specific plea that the vehicle in question was not insured by it and to substantiate it, it examined one of its official as RW.1 and has filed Ext.R-1 & Ext.R-2, which are the correspondences between the company and relevant branch office, which was alleged to have issued the policy. The Tribunal has come to the conclusion that there was no policy cover, yet it

proceeded to apply doctrine of "pay and recover" and accordingly directed the Insurance Company to pay the compensation amount at the first instance and then to recover the same from the owner of the vehicle.

3. Heard both sides. Before this Court, the solitary point argued was when once it is found that the vehicle in question was not insured with the appellant company, there is no question of applying "pay and recover" doctrine, for nothing can be fastened on the Insurance Company in the absence of a valid contract of insurance.

4. I find merit in the said submission of the learned counsel for the appellant. Accordingly, I allow the appeal and the claimants are directed to realize the entire compensation amount with all accrued interest from the third respondent. The third respondent himself is directed to deposit the entire compensation amount with all accrued interest within four weeks from the date of receipt of a copy of this order, whereupon the claimants are entitled to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petition is closed.

5. The learned counsel for the appellant submitted that as directed by this Court, the entire compensation amount has already been deposited and it is now permitted to withdraw the said sum.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ds

To

1. The Motor Accidents Claims Tribunal,
Sub Court, Krishnagiri.
2. The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.Sivakumar, Advocate, S.R.No.1310

UD(CO)
RS(20/02/2017)

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