BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.11.2017
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.1370 of 2016
and
C.M.P.(MD).No.11401 of 2016

United India Insurance Company Limited,
Erode. ... Appellant/3rd Respondent

Vs.

Pechiyammal(died)
1.Rajeswari
2.Murugan ...Respondents 1 &2/Claimants
3.Sowkath Ali
4.Thanga Mani ... Respondents 3&4/Respondents 1&2

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order and decree passed in M.C.O.P.No.322 of 2009, dated 10.09.2012, on the file of the Motor Accident Claims Tribunal/ Principal Sub-Judge, Tenkasi. Tirunelveli District.

For Appellant : Mr.S.Muthalraj
For Respondents : For R1, R2 and R4-No Appearance
R3-Deceased

JUDGMENT

Heard the learned counsel on either side.

2.The Insurance Company has filed this appeal questioning the impugned award on the ground of liability. One Kandasamy Pillai, was walking on the road on 15.09.2009, when the lorry belonging to one Thangamani, driven by his driver Sowkath Ali and insured with the appellant Insurance Company dashed against him causing his death. The said lorry was having insurance. The Insurance policy pertaining to the said lorry was very much in force Therefore, the Tribunal fastened the liability on the appellant Insurance Company. It awarded a sum of Rs.1,60,000/- as compensation.

3.The learned counsel appearing for the appellant would contend that the lorry owner as well as the driver of the offending vehicle were made as parties to the claim petition. They conveniently remained *ex parte*. The appellant Insurance Company had examined an RTO Official as RW1. The said official deposed before the Court that in their records, there is nothing to show that the said Sowkath Ali was having driving license. The Tribunal went on to hold that if the driving license had been issued earlier, the same would not be reflected in the digital records maintained by the RTO Office.

4.The learned Trial Judge also took an adverse inference against the appellant Insurance Company because they did not issue any communication or demand letter calling upon the vehicle owner to produce the driving license of the said Sowkath Ali. Therefore, the entire liability was fastened on the appellant.

5.I am of the view that the approach of the Tribunal is not correct. It is true that the appellant Insurance Company did not issue any letter calling upon the vehicle owner to produce the driving license of the driver in question. When the driver as well as the vehicle owner in spite of receiving summons from the Court chose to remain *ex parte* and did not contest the case against them, it is futile to expect that they would have responded to a communication from the Insurance Company. One has to take an adverse inference only against the vehicle owner and not against the Insurance company. These are matters that lie within the special knowledge of the vehicle owner as well as the driver in question.

6.Section 106 of the Evidence Act, 1872 can be usefully applied in this case. The said provision states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. On the other hand to require the Insurance company to obtain the evidence from all the Transport Officers through out the state or the country is impracticable and unreasonable. The Insurance company cannot be called upon to undertake the ritualistic exercise of sending a communication to the vehicle owner and examining the official from the local RTO Office.

7.In any event, the claimant will not be put to any prejudice, In all such cases, the Insurance company is called upon to satisfy the award and thereafter recover the paid amount from the vehicle owner. If the vehicle owner is desirous of being indemnified and that the liability to satisfy the award should not fall on him, it is for him to enter the witness box and discharge the burden, the proof cast on him. In this case, the owner did not discharge the onus that lay on him squarely.

8.The award dated 10.09.2012, made in M.C.O.P.No.322 of 2009, on the file of the Motor Accident Claims Tribunal, Principal Sub-Judge, Tenkasi, Tirunelveli District is modified accordingly.

9.The appellant is directed to deposit the entire compensation amount of Rs.1,60,000/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants are entitled to withdraw the same, as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal. The appellant Insurance Company shall satisfy the award and thereafter recover the same from the vehicle owner by filing EP.

10.This Civil Miscellaneous Appeal is partly allowed. No costs. consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tenkasi.

Copy to:

1. Rajeswari, W/o.Sundaram,
255/105, Thangam Pillai Compound,
Samba Street, Tenkasi, Tirunelveli District.

2. Murugan, S/o.Kandhasamy Pillai,
Door.No.55, Mela Masi Street,
Tenkasi, Tirunelveli District.

3. Thanga Mani, S/o. Muthusamy,
Door No.96 A-Block No.1,
Sengapalli, Erode District

4. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,Madurai.

+ 1 cc TO Mr.S.Muthalraj , Advocate in SR No. 87641

tsg
AE/JC/SAR2/23.01.2018/3P/8C

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