



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) No.353 of 2015

and

M.P. (md) .No.2 of 2015

The Branch Manager,
Bajaj Allianz General Insurance Company Limited,
Kumari Associate,
178, K.P. Building, K.P. Road,
R.V. Puram, Nagercoil,
Kanyakumari District.

: Appellant/Respondent-3

Vs.

1.K.Subbaiah

2.Mrs.Mani

3.Lekshmi Narayanan

4.Paulson

: Respondents 1&2/Petitioners

: 3rd Respondent/1st Respondent

: 4th Respondent/2nd Respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 26.06.2013 made in M.C.O.P.No.28 of 2011, on the file of the Motor Accident Claims Tribunal, (Special Judge/Special Court for Forest Offence Cases), Nagercoil.

For Appellant : Mrs.K.R.Shiva Sankari
For Mr.S.Srinivasaraghavan
For Respondents : Mr.M.R.Sreenivasan for R1 & R2
No Appearance for R3 & R4

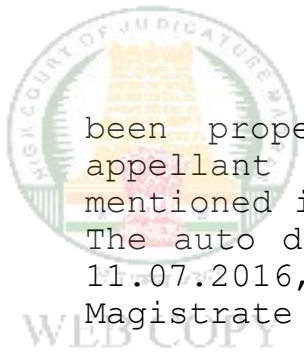
JUDGMENT

Heard the learned counsel on either side.

2.This appeal has been filed by the Insurance Company on the ground of quantum. The claimants are the parents of the deceased. The deceased was riding a two-wheeler. He was hit by an unknown vehicle on 22.07.2010 and died. FIR was registered and subsequently final report was filed against the driver of the offending vehicle. The Tribunal passed an award dated 26.06.2013, directing the appellant herein to pay a sum of Rs.9,96,000/- with interest. Questioning the same, this appeal has been filed.

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3.The learned counsel appearing for the appellant would contend that in the FIR, the description of the offending vehicle has not

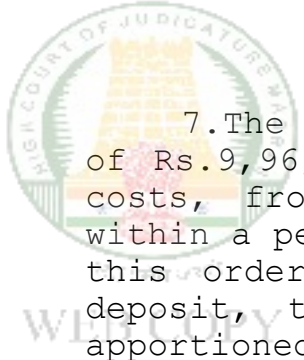


been properly given. If, really, the auto insured with the appellant had caused the accident, the same would have been mentioned in the FIR to the effect that an auto hit the two-wheeler. The auto driver was charge sheeted but acquitted by judgment dated 11.07.2016, in C.C.No.70 of 2011, on the file of the Judicial Magistrate No.3, Nagercoil.

4.The learned counsel would contend that this is a case of bogus claim. It is true that the driver as well as the owner of the auto were shown as respondents in the claim petition. The driver and the owner of the vehicle filed counter opposing the claim petition. A careful reading of the pleadings would show that the involvement of the auto was not denied by the driver and the owner. All that they would say that the auto was not driven by Lekshmi Narayanan during the relevant time. In the Criminal Court also it was specifically found that nobody has spoken about the involvement of Lekshmi Narayanan. But PW5 Ramakrishnan specifically deposed before the Criminal Court that he saw the accident and that it was caused by the vehicle in question. The appellant Insurance Company also accepted that the owner of the vehicle gave intimation about the accident. Therefore, there is no doubt that the accident in question was caused by the said auto bearing registration No.TN74 P 9201 on 22.07.2010. Since the said vehicle had insurance policy coverage, the appellant is bound to satisfy the impugned award.

5.The Tribunal rightly directed the appellant to satisfy the impugned award. But that is not the end of the matter. The question is whether pay and recover principle can be applied in this case. When even according to the owner of the vehicle, the auto insured with the appellant was involved in an accident then it is for him to show that it was driven by a person who had a valid driving license. It was the case of the prosecution that the auto was driven by Lekshmi Narayanan. But the Criminal Court has given its finding that he did not drive the auto when it caused the accident in question. Even before the Tribunal, the said Lekshmi Narayanan has taken a said plea and it was also counter signed by the vehicle owner. Though it was an auto, it could not have been auto driven. The owner who counter signed the counter must have taken the stand that his vehicle was not involved. He did not plead so. The pleading was Lekshmi Narayanan did not drive it. _The vehicle owner did not chose to adduce any evidence as to who then drove the vehicle. Hence this Court will have to necessarily take an adverse inference against him. Since the owner has not established that the auto was driven by a person who was having a valid and effective driving license, the Insurance company is entitled to proceed against the owner for recovery of the paid amount.

6.The award dated 26.06.2013 made in M.C.O.P.No.28 of 2011, on the file of the Motor Accident Claims Tribunal, (Special Judge/Special Court for Forest Offence Cases), Nagercoil is modified accordingly.



7.The appellant is directed to deposit the compensation amount of Rs.9,96,000/- 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 him, if any, by filing proper application before the Tribunal. There is no need for the appellant Insurance company to file any independent proceedings. They can recover the paid amount from the fourth respondent/owner of the vehicle by filing Execution Petition in these proceedings.

8.This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal/
(Special Judge/Special Court for Forest Offence Cases),
Nagercoil.

Copy To:-

1. Lekshmi Narayanan
S/o.Kanthasamy.
Near Railway Crossing,
Putheri, Vadasery Village,
Agastheeswaram Taluk,
Kanyakumari District.

2. Paulson,
S/o.Pauldhas,
No.29/A, Karumpattor,
Swamithoppu Post,
Thamaraikulam Village,
Agastheeswaram Taluk,
Kanyakumari District.

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 88389
+ 1 CC TO Mr.M.R.SREENIVASAN, ADVOCATE IN SR No. 88075

TSG

TE/GT/SAR-3 : 20/12/2017 : 3P/6C
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