IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.818 of 2005

1.Muthu Katha (Died)
2.M.Selvaraj
3.Thangamani
4.M.Thangaraj
5.Pattu
6.Rani
(Appellants 2 to 6 brought on record
as LRs of the deceased sole appellant
viz., Muthu Kathan vide Order of this Court
dated 19.07.2018)made in MP No.1/15 to 3/15
…. Appellants/Petitioners

Versus

1.Mohammad Rafi

2.The Oriental Insurance Co.Ltd.,
B.O.No.7, Second Floor,
No.669, Anna Salai, Chennai - 6

3. Jayaraman …. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 30.09.1996 made in M.C.O.P.No.1271 of 1991 on the file of the Motor Accident Claims Tribunal (III Judge, Court of Small Causes), Chennai.

For Appellants : Mrs.Ramya V Rao

For R1 : Mr.Sivakumar .R.

For R2 : Mrs.G.Sukumari

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 30.09.1996 made in M.C.O.P.No.1271 of 1991 on the file of the Motor Accident Claims Tribunal (III Judge, Court of Small Causes), Chennai.

2. The facts of the case are as follows :-

On 19.10.1990, when the deceased was travelling in a auto rickshaw from west to east direction on the G.N. Chetty Road, the driver of the autorickshaw bearing registration No. T.S.F. 5868 who came from East to West in a rash and negligent manner, hit against the auto travelled by the deceased and due to that the deceased sustained head injury. The driver of the auto rickshaw TSF 5868 was at fault. The injured/claimant was subsequently died.

3. The first respondent, in the counter statement, has stated that the autorickshaw bearing Registration No. TSF-5868 belonging to him was not involved in the alleged accident that said to have been occurred on 19.10.1990. It is further stated that he had purchased the said autorickshaw recently before the accident and in fact he has not even appointed a permanent driver and had kept it in his house to carry out certain preliminary repairs and he has not allowed his vehicle to ply on the road fearing damage to the vehicle due to vanniar bandh. It is the contention of the 1st respondent that his vehicle has been implicated by wrong information given by the police personnel. Hence, the first respondent denied the involvement of the vehicle in the said accident.

4. The second respondent/Insurance Company, in the counter statement, has stated that it is the negligence on the part of the driver of the autorickshaw, in which the deceased was travelled. Therefore the claimant is not entitled for any compensation. The other aspects regarding the age, and income of the deceased were also denied.

5. The Insurance Company has also filed the additional counter statement stating that the policy was issued in favour of one Jayaraman and not in the name of the first respondent, hence, admittedly there is a transfer of ownership of the vehicle and therefore the second respondent is not liable to pay any compensation. The further grievance is that the identity of the offending vehicle was not noted and further stated that the driver of the autorickshaw was holding only L.M.V license and there is no endorsement to drive the auto. Therefore, the second respondent/Insurance Company is not liable to pay any compensation.

6. The Tribunal, after analyzing the evidence and documents placed before it, discussed the ownership of the vehicle and policy coverage, has awarded a sum of Rs.1,64,000/- as compensation by holding that the 1st and 3rd respondents are liable to pay compensation. Aggrieved over the said award and to fix the liability on the Insurance Company/2nd respondent, the appellants/claimants have preferred this appeal.

7. In the grounds of appeal, the appellant/claimant has stated that exonerating the liability of the Insurance Company on the ground that the first respondent has not intimated the transfer of the vehicle to the third respondent is not proper and justified. The other grounds raised in the appeal is that the third respondent was also set exparte and the third respondent has also the knowledge regarding the transfer of the ownership. It is also stated that there is no violation of policy conditions on the date of accident and there was valid insurance for the vehicle and since, the claimant is a third party, he should be properly compensated for the said accident.

8. The appellant/claimant further argued that the Tribunal shall not exonerate the Insurance Company from its liability when the rash and negligent driving determined the involvement of the vehicle and the ownership of the vehicle and the policy stood in the name of particular respondent. It is further argued that during the time of pendency of the Civil Miscellaneous Appeal, the third respondent was set exparte and therefore the second respondent/Insurance Company is liable to pay the compensation and the Insurance Company is also at liberty to recover the same and the insurer to recover the said amount from either of the parties.

9. On the other hand, the second respondent/Insurance Company has argued that he has not received any information with regard to the transfer of the vehicle and the particulars regarding the transfer of ownership of the vehicle was also not intimated. The new purchaser has also not intimated anything to the Insurance Company. Hence, in the absence of above particulars, the insurance company shall not be made liable to pay compnesation and therefore, the order of the tribunal exonerating the liability against the insurance compnay and fixing the liability as against the 1st and 3rd respondent is quite proper and reasonable one and does not warrant any interference.

10. Per contra, it is vehemently argued by the appellant by citing the case law reported in Supreme Court of India in Civil Appeal No.1391 of 2009 (Mallamma (Dead) by L.R.s versus National Insurance Co. Ltd., and others). The relevant portion of the Judgment read as follows :

> “Motor Vehicles Act, 1968, Section 157 - Motor Vehicles Act, 1968, Section 103 - Owner of Vehicle transferring the vehicle - The vehicle was duly insured - There would be deemed transfer of insurance

policy in favour of new owner by virtue of Section 157 of Motor Vehicles Act.1999(2) RCR (Civil) 489, relied."

In the said case, directions were given to the insurer to pay the compensation to the victim and it is upon to the insurer to recover the said amount either from the insured or from the transferrer of the vehicle.

11. It is also argued by the appellant/claimant that the terms and conditions of the insurance policy were not violated by the owner, hence, the Insurance Company is liable to pay the compensation. He has also cited the case law reported in (2012) 4 Mad LJ 260 (National Insurance Co.Ltd., versus K.Azeez). The relevant portion of the Judgment read as follows :

> "Motor Vehicle Act, 1988 (59 of 14988), Sections 2(19) & 157 – Owner – Transfer of Certificate of Insurance – Appeal by Insurance Company against the award passed by Tribunal – Even if Policy of Insurance is in name of registered owner of vehicle and vehicle remains in possession of third party, registered owner continues to be owner – When a vehicle is requisitioned by a statutory authority, registered owner of vehicle cannot refuse to obey order of such authority – When vehicle remains under requisition, registered owner does not exercise any control there over – Injured and deceased are third parties – Offending vehicle owned by 2nd respondent was given on hire with existing Insurance Policy with Appellant company – Owner of vehicle had not violated any of terms and conditions of Insurance Policy – Insurance Company is exclusively liable to pay compensation – CMA dismissed."

12. Based on the aforesaid decision, the learned counsel for the appellants argued that they have third party Insurance and therefore, they have to be properly compensated as there is no violation of policy condition and as on date and the vehicle also stood in the name of one Jayaraman. Hence, the order passed by the Tribunal by fixing the liability as against the first and third respondent is liable to be set aside.

13. In view of the above decision of the Hon'ble Apex Court as well as this Court and also considering the fact in the present case also the documents stood in the name of the registered owner and third party insurance was also in force at the time of the accident, this Court is of the considered view that the Insurance Company is liable to pay compensation to the

claimants. Accordingly, the order of the tribunal directing the 1st and 3rd respondent to pay the compensation is set aside. The 2nd respondent/Insurance Company is directed to pay the compensation to the claimants.

14. In view of the above modification, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petitions is closed, if any. Since the appellants 2 to 6 are legal heirs of the deceased/claimant, they are entitled to equal share in the award passed by the tribunal. Accordingly, out of the total compensation of Rs. 1,64,000/-, the claimants 2 to 6 are entitled a sum of Rs.32,800/- each with interest.

15. The 2nd respondent/Insurance Company is directed to deposit the entire award amount as ordered by the tribunal with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimants bank accounts thro' RTGS within one week thereon as per the apportionment ordered by this Court.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To
The Motor Accident Claims Tribunal
(III Judge, Court of Small Causes), Chennai.

Copy To: The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.R.Sivakumar, Advocate SR.No.70051

+2cc to Mr.A.V.Viswanatha Rao, Advocate SR.No.70386

CMA.No.818 of 2005

RSK(CO)
GMY(03/09/2019)