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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1524 of 2011 &
M.P.No.1 of 2011

United India Insurance Co. Ltd.
Sreeji Chambers,
Mount Road, P.B.No.52,
Coonoor-643 101,
The Nilgiris.

...Appellant/3rd Respondent
Vs

1.Y.B.Shiva
2.Rajendran
3.G.Mohan

...Respondents/Petitioner/Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.11.2010 made in MCOP.No.19/2010 on the file of the Motor Accidents Claims Tribunal (District Judge) of the Nilgiris at Udhagamandalam.

For Appellant : Mr.T.Ravichandran

For Respondents : Mrs.Jayasri Bhaskar for R1
Not ready in notice for R2 & R3

JUDGMENT

The instant appeal has been filed by the insurance company challenging the Award dated 25.11.2010 passed by the Motor Accidents Claims Tribunal (District Judge Nilgiris at Udhagamandalam) in MCOP.No.19 of 2010. The brief facts leading to the filing of the instant appeal are as follows:

2. The first respondent sustained injuries as a result of an accident that took place on 11.04.2007 while travelling as a cleaner in a lorry bearing registration No.TN-43-3060 which dashed against the road divider. The first respondent preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.19 of 2010 seeking a compensation of Rs.6,00,000/-. The Motor Accident Claims Tribunal by its Award dated 25.11.2010



in M.C.O.P.No.19 of 2010, directed the Appellant to pay the first respondent a sum of Rs.2,35,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

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3. Aggrieved by the Award dated 25.11.2010 passed in MCOP.No.19 of 2010, the instant appeal has been filed by the insurance company.

4. Heard Mr.T.Ravichandaran learned counsel for the Appellant and Mrs.Jayasri Bhaskar, learned counsel for the first respondent. The second and third respondents have remained ex parte before the Tribunal. There is no representation on the side of the second and third respondents. Since batta has not been paid for second and third respondents, no notice was served on them. Since this Court is going to confirm the Award, there is no necessity to serve notice on the second and third respondents.

5. According to the learned counsel for the Appellant, the Appellant is not liable to compensate the claim of the first respondent, since the first respondent is not employed with the third respondent who is the insured, but he is an employee of Balaji Transport. The learned counsel for the Appellant drew the attention of this Court to the observations made by the Tribunal under the impugned award wherein the tribunal has rejected Ex.P16, the salary certificate produced by the first respondent, but has made an observation relying upon the same document that the first respondent was employed as a cleaner only with Balaji Transport and not with the third respondent. Therefore, according to the learned counsel for the Appellant, the Tribunal has erroneously passed the Award against the Appellant, even though the first respondent was not an employee of the third respondent (insured).

6. Per contra, learned counsel for the first respondent would submit that the First Information Report was registered only against the driver of the lorry insured with the Appellant. The learned counsel for the Appellant submitted that the First Information Report discloses that the first respondent was a cleaner employed by the third respondent and was travelling in the lorry which is insured with the Appellant at the time of the accident and sustained injuries. The learned counsel for the first respondent also drew the attention of this Court to the Mahazar prepared by the Sub-Inspector of Pudukad Police Station in Cr.No.165 of 2007 which was marked as EX.P22 which also discloses that the first respondent was a cleaner employed by the third respondent and was travelling in the lorry at the time of the accident. The learned counsel for the first respondent also drew the attention of this Court to the insurance policy which was marked as EX.R1 which gave coverage for six employees.



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According to the learned counsel for the first respondent, at the time of the accident, the first respondent apart from the driver was alone travelling in the insured vehicle. Therefore, according to the learned counsel for the first respondent, the Appellant is liable to compensate the claim of the first respondent.

7. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels, observes the following:

a) It has been the consistent stand of the first respondent that he is an employee of the third respondent who is the owner of the vehicle insured with the Appellant. The First Information Report which was registered on the same date of accident, also discloses that the first respondent was travelling in the lorry as a cleaner and was employed by the third respondent who is the owner of the insured vehicle. The Mahazar prepared by the Sub-Inspector of Pudukad Police Station in Cr.No.165 of 2007 dated 13.04.2007 which was marked EX.P22 also confirms that the first respondent is a cleaner employed by the third respondent and was travelling in the lorry insured with the Appellant, at the time of the accident.

b) The Tribunal has rejected Ex.P16 dated 20.08.2009 which is the salary certificate issued by Balaji Transport to the first respondent. The said salary certificate is dated 20.08.2009 whereas the accident took place on 11.04.2007. It is possible that the first respondent may have changed his job with another employer in the year 2009. Therefore based on the said document, the Appellant cannot now contend that the first respondent is not an employee of the third respondent. When the document is dated more than two years after the date of the accident, the Appellant cannot rely upon the said document to prove the employment of the first respondent.

c) The Tribunal has passed a reasoned and well considered Award. The Tribunal has rightly rejected the defence of the Appellant before the Tribunal under the impugned award.

8. In the result, there is no merit in the instant appeal and the Appeal is dismissed without costs. Consequently, connected miscellaneous petition is closed.

9. The learned counsel for the Appellant submitted that the entire Award amount together with interest has already been deposited by the Appellant.



10. The first respondent is permitted to withdraw the amount deposited by the Appellant by filing an appropriate application.

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-s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
(District Judge) of the Nilgiris
Udhagamandalam.

2.The Section Officer,
Vernacular Section,
Madras High Court.

+1 CC to Mr.T.Ravichandaran, Advocate sr 69766.

+1 CC to Mr.K.V. Sridharan, Advocate sr 70174.

C.M.A.No.1524 of 2011

PA (CO)
SP (20/11/2018)