



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.09.2018
Delivered on : 25.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P. (NPD) .No.370 of 2006

1.Natarajan
2.Dhanalakshmi
3.Arunagiri
4.Thilagam
5.Kandasami

... Petitioners

Vs

1.Srinivasan

2.The Branch Manager,
United India Insurance Company Limited,
28, Mailam Road,
Tindivanam - 604 002.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and Decree dated 16.07.2004 in M.C.O.P.No.463 of 2003 on the file of the learned Additional District Judge, Fast Track Court No.II, Tindivanam.

For Petitioners : Ms.C.Jaya Chithra

For Respondents : Mr.D.Ravichander for R2
- No appearance

ORDER

The above Civil Revision Petition has been filed invoking the jurisdiction of this Court under Article 227 of the Constitution of India to set aside the order passed by the learned Judge, Fast Track Court No.II, Motor Accident Claims Tribunal, Tindivanam in M.C.O.P.No.463 of 2003 wherein the learned Judge has dismissed the claim petition filed by the petitioners herein claiming compensation for the death of one Hari Krishnan, who is the son of the petitioners 1 and 2 and brother of the petitioners 3 to 5.



2.The revision petitioners have claimed a sum of Rs.10,00,000/- as compensation for the death of the said Hari Krishnan in a road traffic accident involving the Motor Cycle belonging to the 1st respondent which is insured with the 2nd respondent.

3.It was their case that the accident had occurred only on account of negligence of the driver of the motor cycle and therefore, the respondents herein are liable to compensate them for the death of the said Hari Krishnan. It was the further case that the deceased Hari Krishnan was a commission agent for Oil seeds and was earning a monthly income of over Rs.5,000/-.

4.The 1st respondent/owner of the vehicle has remained absent and was set ex parte before the Tribunal.

5.The Insurance Company had resisted the above claim of the petitioners inter alia contending that the accident was only on account of negligence of the deceased and the Insurance Company had called upon the claimants to submit proof to show that the driver of the motor cycle had a valid licence to drive the same. They had contended that the vehicle was driven by a third person and not the owner of the vehicle. They had also denied the quantum of compensation.

6.The Tribunal, after analyzing the oral and documentary evidence, has dismissed the claim petition on the ground that the driver of the offending vehicle had not been impleaded as a party in the claim petition and therefore, the claim is bad for non-joinder of necessary parties and she proceeded to dismiss the claim petition. Aggrieved by this summary rejection, after the parties have let in evidence, the petitioners have invoked the superintending power of this Court under Article 227 of the Constitution of India.

7.Heard Ms.C.Jaya Chithra, learned counsel appearing for the petitioners and perused the material available on record.

8.The Hon'ble Supreme Court in AIR 2004 SC 1531 [National Insurance Company v. Swaran Singh] has clearly held that even if the insurer is able to prove breach on the part of the insured with reference to the violation of policy conditions regarding holding of a valid licence by the driver or his qualification to drive etc., the insurer would not be allowed to avoid its liability to the third parties and their remedy is to recover the said amount from the insured. This Judgment is holding the field to date and has been quoted with the approval in all later Judgments.



9. In a Motor accident claim, the proper and necessary parties who are liable to compensate the injured/deceased are the insurer and the insured of the offending vehicle. The learned Judge has committed a grave error in dismissing the claim petition on the ground of non-joinder of the driver of the offending vehicle without even making non-joinder a point for consideration. Even in the Code of Civil Procedure, Order 1 Rule 9 which deals with misjoinder and non-joinder, the provision would open with the words "no suit shall be defeated by reason of misjoinder or non-joinder of parties".

10. The Motor Vehicles Act is a beneficial legislation and aimed at providing compensation to families, who have lost their bread winner on account of an accident but for which the deceased/injured may have been able to contribute to the family for a considerable period of time. It is only on account of this accident that the bread winner of the family is either snatched away by the jaws of death or they suffer injury on account of which they are unable to earn. Therefore, the Courts while dealing with such claim petition have to empathise with the dependants of the deceased or the injured claimant.

11. Further, it is an axiomatic principle of law that when a person alleges breach, the onus is upon such a person to prove the same in order to avoid the liability. From the Award, it is not known as to whether the insurer/2nd respondent had proved negligence on the part of the driver of the vehicle and that the vehicle was driven by a person, who is not having a valid driving licence. There is no finding to that effect. However, in view of the various judicial pronouncements, the Insurance Company cannot now take a plea of breach of policy conditions vis-a-vis a third party and avoid paying compensation, when there is a valid contract of Insurance Company. In fact, the issue of non-joinder was not even raised as a point for consideration by the Tribunal and the only issues that were raised as follows:

(1) Whether the petitioner is entitled for claim?

(2) Whether the negligence on the part of Bajaj M 80 rider?

(3) Whether the respondents 1 and 2 are liable to pay compensation?

12. In the light of the above, the order of the Motor Accident Claims Tribunal suffers from an error apparent on the face of it and a failure on the part of the Tribunal to exercise its jurisdiction vested on it. Therefore, invoking the provisions of Article 227 of the Constitution of India, the order of the Tribunal is set aside and the matter is remitted back to the Tribunal to consider the evidence on the lines of



the principles enunciated in Swaran Singh's case, and pass orders after hearing both the parties.

In the result, this Civil Revision Petition is allowed. No costs. Since the claim itself is of the year 2003, the Tribunal is directed to dispose of M.C.O.P.No.463 of 2003 within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mps

To

1.The Additional District Judge,
Fast Track Court No.II,
Tindivanam.

2.The Branch Manager,
United India Insurance Company Limited,
28, Mailam Road,
Tindivanam - 604 002.

3.The Section Officer,
VR Section,High Court,
Madras.

+lcc to Mr.C.Jayachithra, Advocate, S.R.No.72867

C.R.P. (NPD) .No.370 of 2006

SS(CO)
GSP(19/11/2018)