

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA Nos.924 of 2018, 3364 of 2017,
CMP Nos.10541 and 7608 of 2018 in CMA No.924 of 2018

The National Insurance Company Ltd.,
Third Party Hub- 3rd Floor,
No.751, Anna Salai,
Chennai - 600 002.

... Appellant in CMA No.924/2018/
2nd Respondent

Stella Jebakani

... Appellant in CMA
No.3364/2017/Petitioner

-vs-

1.Stella Jebakani

...1st Respondent in CMA.No.924/18/Petitioner

2.Putuluru Suryanarayana Reddy

...2nd Respondent in CMA
No.924/2018/1st Respondent

1.Putuluru Suryanarayana Reddy

...1st Respondent in
CMA.No.3364/17/1st Respondent

2.The National Insurance Company Ltd.,
Third Party Hub- 3rd Floor,
No.751, Anna Salai,
Chennai - 600 002.

...2nd Respondent in CMA
No.3364/2017/2nd Respondent

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the order & Decreeal order made in M.A.C.T.O.P.No.4031 of 2014 dated 04.07.2017 on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.

Mr.Amar D.Pandiya : For appellant in CMA No.3364/2017 and
For R1 in CMA No.924/2018

Mrs.N.B.Surekha : For R2 in CMA No.3364/2017 and
For appellant in CMA No.924/2018

C O M M O N J U D G M E N T

[Judgment of the Court was made by
K.K.SASIDHARAN, J.]

The award dated 4 July 2017 in MACTOP No.4031 of 2014 on the file of the Motor Accidents Claims Tribunal, Chennai, is under challenge at the instance of the Insurance Company in CMA No.924 of 2018 on the ground that driver of the vehicle was not having a valid driving license to drive Heavy Goods Vehicle as on the date on which the accident took place. The claimant has filed the appeal in CMA No.3364 of 2017 on the ground that the Tribunal awarded only a less amount as compensation and as such additional compensation should be paid.

2. We have heard the learned counsel for the respective parties. We have also perused the documents available on record including the documents now produced by the appellant in CMA No.924 of 2018 along with the interlocutory application.

3. The accident in question took place on 8 April 2014. The petitioner in the claim petition was travelling as a pillion rider in the motor vehicle bearing Registration No.TN 21 F 9709 from Uthirameur to Kanchipuram near Maruthuva padi Koot Road. The lorry bearing Registration No.AP 02 TB 6679 which was driven by the 2nd respondent in CMA No.924 of 2018 in a rash and negligent manner caused the accident in question. The claimant sustained grievous injury resulting in filing the claim petition for payment of compensation.

4. Before the Motor Accidents Claims Tribunal, the National Insurance Company took up a specific contention that the driver was not having a valid driving license to drive Heavy Goods Vehicles. The Insurer therefore denied liability.

5. The Tribunal on the basis of Exs.R1 and R2 arrived at a finding that the driver was having a valid driving license and rejected the contention taken by the insurance company.

6. We have perused the driving license marked as Ex.R1. There is nothing to show that the driver was having a valid driving license to drive the Heavy Goods Vehicle as on the date on which the accident took place. The finding given by the learned trial Judge is therefore not supported by evidence.

7. The learned counsel for the claimant contented that even if it is found that the driver was not having a valid driving license, still the Insurance company can be made liable to pay the amount of compensation with liberty to recover the amount from the owner.

8. The question of directing the Insurance Company to make payment and thereafter recover from the owner would arise only in case there is a finding to that effect. Here in the subject case, notwithstanding the document in Ex.R1 which shows that the driver was not having a valid driving license, the Tribunal arrived at a finding that he was armed with a valid license.

9. The appellant in CMA No. 924 of 2018 has now produced the Driving Licence, Insurance Policy, Registration Certificate and permit of the vehicle and other documents with a Miscellaneous Petition.

10. After hearing the learned counsel for the parties and on perusal of the documents, we are of the view that interest of justice would be sub served by remanding the matter to the Trial Court for fresh consideration with regard to the issue relating to the driving license. The claimant and the Insurance Company should be given reasonable opportunity to substantiate their contention with regard to the question as to whether the driver was having a valid driving license to drive Heavy Goods Vehicle as on the date on which the accident took place.

11. The order dated 4 July 2017 is set aside and matter is remitted to the Motor Vehicle Accidents Claims Tribunal, 4th Small Causes Court, Chennai for fresh consideration. We make it clear that it is open to the Tribunal to arrive at a factual finding on the basis of the records, without in any way being influenced by the prima facie observation made by us on the basis of the documents produced before us.

12. The Civil Miscellaneous Appeal filed by the Insurance Company in CMA No. 924 of 2018 is allowed. In view of the order allowing CMA No.924 of 2018, the appeal filed by the claimant in CMA No.3364 of 2017 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

To Sub Assistant Registrar

1.The Motor Accidents Claims Tribunal,
IV Small Causes Court, Chennai.

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

+2cc to Mr.Amar D.Pandiya, Advocate, S.R.No.56251 & 56253

+2cc to Mr.N.B.Surekha, Advocate, S.R.No.55984 & 55985

CMA Nos.3364 of 2017 and
924 of 2018

NRI (CO)
GSP (23/10/2018)



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