

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1562 of 2010

Divisional Manager,
M/s. National Insurance Company Ltd.,
Divisional Office,
J.N.Street,Pondicherry.

... Appellant

Vs

1.Jayaraman
2.Poongavanam
3.Neelambal
4.T.Jayapaul

5. M/s.Srinivasa Nadar & Sons,
58, South Raja Street,
Tutukudi-1.

6. The New India Insurance Company Ltd.,
Cuddalore.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 16.11.2009 made in M.C.O.P.No.252 of 2000 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Villupuram.

For Appellant : Mr.D.Bhaskaran

For Respondents: R1 to R6 - No appearance

J U D G M E N T

The instant appeal has been filed by the Appellant/Insurance Company challenging the award dated 16.11.2009, passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Villupuram in its Judgment and Decree dated 16.11.2009 in M.C.O.P.No.252 of 2000.

2.The brief facts leading to the filing of the instant appeal are as follows:-

The respondent Nos.1 to 3 are the legal heirs of the deceased Narayana Maistry, who died on 26.11.1985 in an accident caused by a car insured with the Appellant. The legal heirs of the deceased Narayana Maistry have preferred a compensation claim, originally against the sixth respondent/Insurance Company and subsequently, by the order of the Tribunal the Appellant was also impleaded as fourth respondent, before the Tribunal. The respondent Nos.1 to 3 have preferred a claim for Rs. 1,70,000/-. The Tribunal by its Award dated 16.11.2009, directed the Appellant to pay the respondent Nos.1 to 3 50% of the compensation amount together with interest at 7.5% per annum and the remaining 50% was directed to be paid by the sixth respondent /Insurance Company. The total compensation awarded by the Tribunal was Rs.82,000/- and the 50% payable by the Appellant works out to Rs.41,000/-.

3. Aggrieved by the Award dated 16.11.2009, the instant appeal has been filed.

4. Heard Mr.D.Bhaskaran, learned Counsel for the Appellant. Despite service of notice on the respondents and their names having been printed in the cause list today, none appears on the side of the respondents.

5. According to the learned Counsel for the Appellant, the primary ground for challenge is that the Appellant/Insurance Company is not liable to pay the compensation to the respondent Nos.1 to 3. The accident is said to have been taken place on 26.11.1985 but the details of the insurance coverage with the Appellant was not disclosed in the claim petition or a copy of the insurance policy was marked by the respondent Nos. 1 to 3 in their oral evidence submitted before the Tribunal. He further submitted that the owner of the vehicle has also not furnished the insurance policy allegedly issued by the Appellant and without establishing that the vehicle was insured with the Appellant, the Tribunal has erroneously passed an Award in favour of the respondent Nos.1 to 3.

6. This Court after considering the materials available on record and after perusing and examining the impugned Award and after hearing the submissions of the learned Counsel for the Appellant observes the following:

(a) The liability of the Appellant /Insurance Company is alone challenged in this appeal. The quantum of compensation awarded by the Tribunal has not been challenged.

(b) In its counter statement filed before the Tribunal, the Appellant has not categorically denied that no insurance policy was issued to the owner of the vehicle which caused the

accident. Their contention was that no proper details were given by the respondent Nos.1 to 3 about the details of insurance policy. According to the Appellant, without those details it cannot be confirmed by the Appellant that there is insurance coverage given by the Appellant for the vehicle.

(c)The Tribunal relied upon a Division Bench Judgment of this Court in the case of United India Insurance Company Ltd., Vs. Govinddaswamy and others reported in 2003 (2) L.W.116, which observed that giving particulars about the car number and the company which has insured it is sufficient to shift the burden on the Insurance Company to prove that there was no insurance coverage. In the instant case, the Registration number of the car and the insurance company have been disclosed by the respondent Nos.1 to 3. Applying the Division Bench judgment of this Court, the Tribunal has held that the Appellant is liable to compensate the respondent Nos.1 to 3. This Court is in agreement with the view taken by the Tribunal.

7.For the aforementioned reasons, this Court is of the considered view that there is no merit in the instant appeal.

8.Accordingly, the Appeal shall stand dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

mm/pam

To

1.The Motor Accident Claims Tribunal
(Chief Judicial Magistrate Court),
Villupuram.

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

+1cc to Mr.D.Bhaskaran, Advocate SR.No.57856

C.M.A.No.1562 of 2010

GMV(08/10/2018)