

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.1316 of 2006

and

CMP.No.1474 of 2009

National Insurance Company Ltd.,
Rep. by Branch Manager,
Bangalore Appellant

Versus

1.P.L.Arunachalam
2.Aburupam
3.M.Subramani Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Award and Decree dated 18.08.2005 made in O.P.No.457 of 1997 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Dharmapuri.

For Appellant : Mr. D.Bhaskaran

For 1st and 2nd Respondents : Mr. R.Selvam

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Award and Decree dated 18.08.2005 made in O.P.No.457 of 1997 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Dharmapuri.

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

On 31.12.1995, when the deceased took his Tempo bearing Registration No.KA-02-8059 as driver from Bangalore with full load of Grapes and when the Tempo was proceeding to Coimbatore through Avinashi Main Road, at that time, to avert an accident against the on coming lorry, the driver applied brake. Due to brake failure, the Tempo dashed against the lorry, the driver sustained fatal injuries and immediately he was taken to

Coimbatore Medical College and admitted as inpatient. He died on 02.01.1996. The claimants have claimed a sum of Rs.5,00,000/- as compensation. The first respondent is the owner of the lorry and the second respondent is the insurer of the said lorry.

3. The appellant/Insurance Company, in the counter statement, has denied the fact that due to brake failure of the vehicle, the accident had occurred. Further, it is stated that the lorry was not insured with the second respondent and there is no document relating to insurance was filed before the appellant/Insurance Company. Hence, the appellant/Insurance Company disowned the liability claimed by the claimants.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that, no eyewitness was examined to prove the fact of the accident that, it occurred only due to the failure of the brake. The Tribunal, relied on the evidence that the criminal case has been registered against the Tempo driver and that was taken as an evidence to prove the occurrence. Further, the Tribunal has observed that though, the claimants have not filed any relevant documents regarding the policy number, it is seen that the claimants have furnished the details that the lorry is insured with the National Insurance Company at Bangalore. Hence, the Tribunal has fixed the liability on the Insurance Company.

5. Based on the details furnished by the claimants, viz., occupation of the deceased as driver and considering the age, the Tribunal has awarded a sum of Rs.2,75,000/- as compensation. Aggrieved against the said liability, the appellant/Insurance Company has preferred this Appeal.

6. The vehement arguments advanced by the appellant/Insurance Company is that since the claim application was preferred by the claimants under Section 163A, it is not very much objected by the appellant that the claimants are entitled for compensation and the claimants have not furnished any detail of insurance in the claim application and on this aspect, witness on the side of the Insurance Company have spoken before the Tribunal that they are unable to trace out inspite of issuing notice to the claimants and also the owner of the lorry. Further, it is also brought to the notice of the Court that the first respondent, who is the owner of the lorry, is set exparte. Since, either the claimants or the owner of the lorry furnished the details of policy, the Insurance Company is not in a position to make any compensation as liability fixed on them. It is a clear evidence on the side of the appellant that they have taken effective steps to furnish the copy of the policy. At this juncture, the learned counsel for the claimants undertake to furnish a copy of the policy to the appellant.

7. Hence, in view of the undertaking given by the respondents/claimants, about furnishing the copy of the policy along with a copy of the order passed by this Court, this Court does not foresee any impediment for the appellant to satisfy the Decree.

8. With the above observation, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

lpp

To

1. The Motor Accident Claims Tribunal
(Additional District Judge), Dharmapuri.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.M.Selvam, Advocate SR.No.65626

+1cc to Mr.D.Bhaskaran, Advocate SR.No.65401

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RR(CO)

GMV (07/03/2019)

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