

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal Nos.1824 to 1827 of 2013

C.M.A.No.1824 of 2013

The Oriental Insurance Co. Ltd.,
Gudiyatham. ... Appellant/2nd Respondent

Vs.

1.Devi
2.Ellappan
3.Raniyammal
4.Kalaiselvi
5.Sivamoorthy
6.Minor Kalaivanan
(Minor rep. by NF and natural Guardian
viz., father Ellappan) ... Respondents 1 to 6/Claimants 1 to 6

7.Chinna Obul Reddy ... Respondents No.7/1st Respondent

C.M.A.No.1825 of 2013

The Oriental Insurance Co. Ltd.,
Gudiyatham. ... Appellant/2nd Respondent

Vs.

1.Raghu
2.Minor Naveenraj
3.Minor Divyabharathy
(Minors rep. By NF and natural Guardian
viz., father Raghu)... Respondents 1 to 3/Claimants 1 to 3
4.Chinna Obul Reddy ... Respondents No.4/1st Respondent

C.M.A.No.1826 of 2013

The Oriental Insurance Co. Ltd.,
Gudiyatham. ... Appellant/2nd Respondent

Vs.

1.Dhandapani 1st Respondent/Claimant
2.Chinna Obul Reddy ... 2nd Respondent/1st Respondent

C.M.A.No.1827 of 2013

The Oriental Insurance Co. Ltd.,
Gudiyatham.

... Appellant/2nd Respondent

Vs.

1.Minor Kadhir

(Rep. By NF natural guardian viz.,
father Sasikumar)

... 1st Respondent/Claimant

2.Chinna Obul Reddy

... 2nd Respondent/1st Respondent

PRAYER IN C.M.A.NO.1824 of 2013 This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 29.02.2012 made in MCOP.No.190 of 2007 on the file of the Motor Accident Claims Tribunal/(Subordinate Judge), Gudiyatham.

PRAYER IN C.M.A.NO.1825 of 2013 This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 29.02.2012 made in MCOP.No.224 of 2007 on the file of the Motor Accident Claims Tribunal/(Subordinate Judge), Gudiyatham.

PRAYER IN C.M.A.NO.1826 of 2013 This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 29.02.2012 made in MCOP.No.235 of 2007 on the file of the Motor Accident Claims Tribunal/(Subordinate Judge), Gudiyatham.

PRAYER IN C.M.A.NO.1827 of 2013 This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 29.02.2012 made in MCOP.No.92 of 2008 on the file of the Motor Accident Claims Tribunal/(Subordinate Judge), Gudiyatham.

For Appellant : Mr.M.Krishnamoorthy
(in all appeals)

For Respondents : Mr.G.Vinothkumar for R1 to R6 in CMA.1827/13
R1 to R3 in CMA.1825/13
R1 i CMA. 1826/13 & 1827/13
R7 Given up in CMA.1824/13
R4 Given up in CMA.NO.1825/13
R2 Given up in CMA.NO.1826 & 1827/13

COMMON JUDGMENT

Aggrieved over the finding of the Tribunal dated 29.02.2012 made in MCOP.Nos.190, 224 and 235 of 2007 and MCOP.No.92 of 2008 on the file of the Motor Accident Claims Tribunal/(Subordinate Judge), Gudiyatham, the second respondent-Insurance Company filed these present appeals seeking to set aside the award passed by the Tribunal.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 13.02.2007 at about 6.45 a.m., while the deceased and petitioners in MCOP.No.235 of 2007 and MCOP.No.92 of 2008 were travelling as passengers in a bus bearing Registration No.KA-08-A-4777 from V.Kotta to K.G.F in Kppam Road, near Sandha Gatta Cross, the Lorry bearing Registration No.AP-02-W-1564 owned by the first respondent and insured with the second respondent came at high speed in the opposite direction dashed against the passenger bus resulting in the death of one Srinivasan(MCOP.No.190 of 2007), Kalaivani(MCOP.No.224 of 2007) and injuries to the petitioner in MCOP.No.235 of 2007 and to the minor petitioner in MCOP.No.92 of 2008. The petitioners state that the rash and negligent driving by the first respondent lorry driver alone caused the accident.

3.1. The petitioners in MCOP.No.190 of 2007, who are the wife, parents, brother and sister of the deceased Srinivasan contends that the deceased Srinivasan was aged about 25 years and by working as a Supervisor in a private concern at Bangalore was earning a sum of Rs.7,500/- per month. Due to his sudden death, the petitioners lost the source of income to the family. Hence, they seek a sum of Rs.15,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

3.2. The petitioners in MCOP.No.224 of 2007, who are the husband, children of the deceased Kalaivani states that the deceased was aged about 35 years and by working as construction worker was earning a sum of Rs.3,000/- per month. Hence, they seek a sum of Rs.15,00,000/- from the respondents, who are the owner and insurer of the offending vehicle.

3.3. The petitioner in MCOP.No.235 of 2007 stated that he was aged about 25 years and was working as construction worker in a private concern earning a sum of Rs.4,500/- per month. As he suffered grievous injuries, he is not able to attend to his work and suffered loss of income. Hence, he seeks a sum of Rs.5,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

3.4. The minor petitioner in MCOP.No.92 of 2008 states that he was four years old at the time of the accident and due to grievous injuries suffered, he is still under going treatment suffering from various difficulties caused by the injuries sustained in the accident. He seeks a sum of Rs.50,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

4. On the other hand, the appellant/Insurance Company which opposed the claim petition by filing detailed common counter contends that the claim relating to age, avocation and income of the two deceased persons as well as injured petitioners is not correct. The claim of the petitioners that the negligence of the first respondent lorry driver caused the accident is denied. The manner and nature of the accident as alleged in the petition is not correct. The vehicle involved in the accident was not insured with the second respondent and the driver of the lorry did not possess any valid driving licence. As such, the second respondent-Insurance Company is not liable to pay any compensation. Hence, they seeks dismissal of the claim petition.

5. Before the Tribunal, the petitioners examined P.W.1 to P.W.4 and produced documents Ex.P1 to Ex.P14 to prove their claim. On the side of the respondents, R.W.1 to R.W.3 were examined and documents Ex.R1 to Ex.R4 were produced to rebut the claim of the petitioners.

6. The Tribunal, on the basis of available materials on record, found the negligence of the first respondent lorry driver alone was the cause for the accident and awarded a sum of Rs.6,51,500/- as compensation to the petitioners in MCOP.No.190 of 2007. A sum of Rs.4,10,000/- is awarded as compensation to the petitioners in MCOP.No.224 of 2007. A sum of Rs.56,453/- is awarded as compensation to the petitioner in MCOP.No.235 of 2007. A sum of Rs.10,000/- is awarded as compensation to the petitioner in MCOP.No.92 of 2008. Aggrieved over the said finding of the Tribunal, the second respondent-Insurance Company come forward with these present appeals to set aside the award passed by the Tribunal.

7. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.

8. The learned counsel appearing for the second respondent/Insurance Company/appellant contends that as there was violation of policy condition and the vehicle was driven by a person without valid driving licence, the second respondent-Insurance Company is not liable to pay any compensation. Hence, the second respondent seeks to entertain the appeal and to set

aside the award passed by the Tribunal.

9. On the other hand, disputing the claim of the insurer, the learned counsel appearing for the petitioners/claimants contends that the Tribunal correctly appreciated the evidence on record and arrived at just and fair compensation. Since the Insurance coverage was in force and no acceptable evidence was let in to prove any violation of policy condition, the second respondent-Insurance company is liable to pay compensation and no ground is made out by the Insurance Company to interfere with the award under challenge. Hence, the petitioners/claimants seek for dismissal of the appeals.

10. In the present appeals, the only issue raised by the second respondent/Insurance Company/Appellant is that they are not liable to pay any compensation, it at all they can be directed to pay and recover from R-1, the award passed by the Tribunal as there was violation of policy condition committed by the insured. The appellant/Insurance Company did not raise any challenge to the finding of the Tribunal in respect of negligence aspect and the quantum of award arrived at.

11. In the case on hand, the petitioners contended that the bus in which the deceased and other persons were travelling met with accident due to the rash and negligent driving of the first respondent lorry by its driver. The petitioner in M.C.O.P.No.235 of 2007, who deposed as P.W.3 stated that he was travelling as a passenger in the bus and witnessed the occurrence. According to him, the accident occurred only due to the rash and negligent driving of the lorry by its driver. The police registered a case against the driver of the lorry as per Ex.P1 First Information Report. After completing the investigation, the police also laid charge sheet against the driver of the first respondent lorry as evidenced by Ex.P4 copy of the charge sheet. Thus, it is clear that the investigation by police revealed prima facie materials against the first respondent lorry driver as the cause for the accident which occurred. The eye witness to the occurrence who deposed as P.W.3 clearly stated about the manner in which the accident took place. Even though, the respondents examined the second respondent Legal Assistant, Company Investigator and another staff member of Transport Department as R.W.1 to R.W.3, the driver of the first respondent lorry has not come forward to depose before the Tribunal. In such circumstances, it is clear that the eye witness account of the accident by P.W.3 is not contradicted with any acceptable evidence by the respondents. Further, Ex.P1 First Information Report as well as Ex.P4 Charge Sheet has been laid against the driver of the first respondent lorry only. In such circumstances, it is clear that the claim of the petitioners, namely, negligence of the first respondent lorry driver alone resulted in the accident is just and proper

and the conclusion arrived at by the Tribunal holding the first respondent lorry driver responsible for the accident is correct and the same needs no interference.

12. As stated earlier, the second respondent Insurance Company has not seriously questioned the quantum of award passed by the Tribunal. However, it is contended by the learned counsel appearing for the second respondent-Insurance Company that the driver of the offending vehicle (lorry) belonging to the first respondent did not possess any valid driving licence and as such it amounts to violation of policy condition. The second respondent-Insurance Company produced a copy of the Insurance Policy for the offending vehicle as Ex.R1. The second respondent-Insurance Company examined their officials as R.W.1 and R.W.2 and Staff of Transport Department, Ananthpur as R.W.3. It is clear from Ex.R3 letter issued by the Deputy Transport Commissioner, Ananthpur that the driver of the offending vehicle was not issued any valid driving licence.

13. In the case on hand, the first respondent owner has remained exparte and has not come forward to contest the claim of the petitioners. The Tribunal, on the ground that the Insurance company has not taken any steps to examine the driver of the vehicle, held that the insurance company cannot avoid its liability to pay compensation amount. The Insurance Company examined the surveyor as well as staff of the Transport Department as R.W.2 and R.W.3. The Junior Assistant of Deputy Transport Commissioner Office, Ananthpur, who deposed as R.W.3 stated that as per the available records from 1960, there was no licence issued to the driver of the first respondent lorry. According to him, Ex.R4 is only Identity Card and it is not valid licence. Therefore, it is clear that the Insurance Company has taken steps to appoint a surveyor to examine the facts of the case and also examined the staff of the RTO Department to prove the fact of the lorry driver being not possessed with valid licence. In such circumstances, the reasoning of the Tribunal that the second respondent-Insurance Company failed to prove the fact that the offending vehicle driver did not possess valid licence cannot be accepted. It is clear from the evidence of R.W.1 to R.W.3 that the driver of the first respondent lorry, was not having valid driving licence and the same will clearly amount to violation of policy condition in Ex.R1 Insurance Policy. As there is a clear cut violation of policy condition, the second respondent-Insurance Company is entitled to claim that they are not liable to pay the compensation. However, considering the facts and circumstances of the case and the fact that the Insurance coverage was in force and it is only violation of policy condition, the second respondent-Insurance Company is liable to pay award amount at the first instance and then recover the same from the owner of the vehicle, the first respondent herein as he permitted the unlicensed person to drive the vehicle which is clear the violation of condition of Ex.P1 Policy. Thus, the claim of the second respondent-Insurance

Company/appellant to give them right to recover the award amount from the owner of the vehicle is just and proper and the same is to be accepted. Apart from that, the finding of the Tribunal regarding negligence as well as quantum of award passed, no issue was raised by the appellant/Insurance Company before this Court. Hence, the order passed by the Tribunal with regard to the negligence as well as the quantum of award is confirmed. In the light of the above said discussion, as there is violation of Ex.R1 Insurance Policy condition, the Tribunal is not correct in holding that the respondents are jointly and severally liable to pay the compensation. On the other hand, as rightly contended by the second respondent-Insurance company they are entitled to recover the award amount from the owner of the vehicle after passing the entire award amount to the claimants. The point is answered accordingly.

14. In the result, this civil miscellaneous appeal is partly allowed. No costs. The award passed by the Tribunal dated 29.02.2012 made in MCOP.Nos.190, 224 and 235 of 2007 and MCOP.No.92 of 2008 on the file of the Motor Accident Claims Tribunal/(Subordinate Judge), Gudiyatham, in respect of the negligence and quantum of award is confirmed. However, the second respondent-Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit of the award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order and then the appellant-Insurance Company is entitled to recover the same from the first respondent/owner of the vehicle in accordance with law. On such deposit, the petitioners/claimants in all claim petitions are permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To
The Subordinate Judge,
(Motor Accident Claims Tribunal)
Gudiyathyam.

+ 3 cc to Mr.M.Krishnamoorthy Advocate,SR.13536,13537,13538
+ 1 cc to Mr.G.Vinothkumar Advocate,SR.13478

C.M.A.Nos.1824 to 1827 of 2013

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nr 04/04/2018