

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

THE HON'BLE MR. JUSTICE R. SUBBIAH
and
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

C.M.A. No.3252 of 2013 & M.P. No.1 of 2013

United India Insurance Company Ltd.
134, Greams Road
Chennai 600 006

Appellant

vs.

1 P. Mahalakshmi
2 Minor P. Nikesh
3 Minor P. Vineetha
4 Minor P. Malavika

(Minors 2 to 4 represented by their
mother, viz., the 1st petitioner)

5 Periyasami
6 P. Saroja
7 V. Saravanan

Respondents

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, challenging the award and decree dated 26.02.2013 passed in M.C.O.P. No.2090 of 2009 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For appellant Mr. S. Arun Kumar

For respondents Mr. C. Munusamy for R1 to R6

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

The second respondent in M.C.O.P. No.2090 of 2009, viz., United India Insurance Company Ltd. (for brevity "the Insurance

Company"), feeling aggrieved by the judgment and decree dated 26.02.2013 passed by the Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai (for brevity "the Tribunal") in the said claim petition, has preferred the instant Civil Miscellaneous Appeal, primarily on the ground that the claim made by the claimants, who are the legal heirs of the deceased Panchacharam, is a false claim. In other words, according to the Insurance Company, the legal heirs of the deceased have filed the claim petition falsely roping in the vehicle insured with it as the one involved in the accident, when the fact remains that the lorry in question was not at all involved in the accident.

2 For the sake of convenience, the parties are referred to as per their rank in the instant Civil Miscellaneous Appeal.

3 In order to appreciate the issue involved in this appeal, it is necessary to have a look at a vignette of facts as under:

3.1 The respondents 1 to 6 are the legal heirs of the deceased Panchacharam. According to them, on 21.11.2008, about 18.30 hours, when the deceased was riding his bike bearing Registration No.TN-07 AD 2379 at Poonamallee High Road, Vanagaram, opposite Jesus Calls Church, a lorry bearing Registration No.TN-28-Y-3148 belonging to the seventh respondent and insured with the appellant Insurance Company, came in a rash and negligent manner and dashed the deceased from behind, eventually resulting in his demise. Hence, the claim petition by the respondents seeking a compensation of Rs.15 lakhs.

3.2 In order to prove their claim, the respondents marked Exs.P.1 to P.8 and examined P.W.1 (Mahalakshmi, the wife of the deceased) and P.W.2 (Annamalai, an eye witness to the accident). On the side of the appellant-Insurance Company, the involvement of the lorry was completely denied and in support of its claim, the appellant Insurance Company marked Exs.R.1 to R.3 and examined one Devanathan, Deputy Manager as R.W.1, one Rajendran, Special Sub Inspector of Police as R.W.2 and one Prabhakaran, Deputy Superintendent of Police, CB-CID as R.W.3.

3.3 The Trial Court, after appreciating the oral and documentary evidence, came to the conclusion that the accident in question was caused only due to the involvement of the lorry bearing Registration No.TN-28-Y-3148 insured with the appellant Insurance Company and passed an award fixing the total compensation as Rs.14,00,400/-, the break up of the same being Rs.13,10,400/- towards pecuniary loss, Rs.20,000/- towards loss of consortium, Rs.10,000/- towards funeral expenses and

Rs.60,000/- towards loss of love and affection. Aggrieved by the said award, the appellant Insurance Company is before this Court.

4 It is the submission of the learned counsel for the appellant Insurance Company that pending appeal, since the appellant Insurance Company felt that there were certain discrepancies in the police investigation with regard to the manner of accident and also involvement of the lorry insured with it, the appellant Insurance Company addressed a complaint dated 14.11.2011 to the Inspector General of Police, Crime Branch, CID, Block 3, SIDCO Electronics Corporation, I Floor, Thiru.Vi.Ka. Industrial Estate, Guindy, Chennai - 32, through Registered Post with Acknowledgment Due, seeking re-investigation of the accident in question; the said complaint was received by the addressee on 15.12.2011; this Court, vide order dated 15.04.2016, directed the CB-CID to file status report with regard to the complaint dated 14.11.2011; pursuant to the order dated 15.04.2016 passed by this Court, on 26.04.2016, the appellant Insurance Company addressed a reminder to the CB-CID seeking outcome of the complaint dated 14.11.2011 by enclosing a copy of the complaint dated 14.11.2011 and also this Court's order dated 15.04.2016; but, till date, the outcome of the complaint dated 14.11.2011 is not made known to the appellant Insurance Company. Based on the said submissions, the learned counsel for the appellant Insurance Company sought further time.

5 On a perusal of the impugned judgment, we find that the appellant Insurance Company has failed to establish their defence before the Tribunal that the lorry in question insured with it was not involved in the accident.

6 This Court's above view can be justified by an analysis of the evidence of R.Ws.1 to 3.

6.1 V. Devanathan, Deputy Manager of the appellant Insurance Company, who was examined as R.W.1, has deposed before the Tribunal that a case was registered against the driver of the lorry owned by the seventh respondent and that he is an accused in C.C.No.1306 of 2016 and since he has not appeared before the Court, non-bailable warrant is pending.

6.2 Rajendran, Special Sub Inspector of Police, Traffic Investigation, who was examined as R.W.2, has deposed before the Tribunal that he received information of the accident only through telephone and that an FIR cannot be registered through a telephonic complaint, rather, it should be registered only based upon a written complaint.

6.3 Prabhakaran, Deputy Superintendent of Police, CB-CID,

who was examined as R.W.3, in his cross-examination, has deposed that no enquiry in respect of the claim made by the respondents is pending in their office.

7 On an analysis of the oral evidence of the aforesaid witnesses examined by the appellant Insurance Company, we find that their oral testimony can hardly be of any avail to come to the conclusion that the lorry in question insured with the appellant Insurance Company was not involved in the accident, inasmuch as their testimony is bald in nature.

8 Albeit the award was passed as early as in 2003, till date, the appellant Insurance Company does not seem to have followed up its complaint, much less with vigour. Though it is the case of the appellant Insurance Company that it had addressed a reminder on 26.04.2016, no reason, much less any plausible reason, has been assigned by the appellant Insurance Company for not pursuing the complaint till the order dated 15.04.2016 came to be passed by this Court. Thus, though the Tribunal has awarded compensation in February 2013, the respondents/claimants have not been able to reap the fruits of the Tribunal's judgment, in view of pendency of this appeal since 2013. Bearing in mind the fact that the Motor Vehicles Act, 1988, is a beneficial piece of legislation, the prime object of which is to provide succor to the victims of motor accidents and to the dependents of the deceased, we are of the considered view that this Court cannot make the respondents/claimants wait eternally to reap the benefit of the award passed by the Tribunal. In such view of the matter, this Court is not inclined to grant time as sought by the learned counsel for the appellant Insurance Company.

9 Coming to the quantum of compensation, it is seen that the deceased, aged 33 years, was working as a Civil Contractor and in order to prove his income, Ex.P.6, copies of payment vouchers were marked before the Tribunal and the Tribunal, by considering Ex.P.6, had fixed the monthly income of the deceased as Rs.9,100/-. After deducting one-fourth towards the personal expenses of the deceased and arriving at Rs.6,825/- as his take home pay and by application of multiplier 16, the Tribunal has worked out the pecuniary loss at Rs.13,10,400/- (Rs.6,825 x 12 x 16), besides awarding Rs.20,000/- towards loss of consortium, Rs.10,000/- towards funeral expenses and Rs.60,000/- towards loss of love and affection, thus totally Rs.14,00,400/-, which, in our opinion, is quite reasonable warranting no interference.

10 In view of the foregoing discussion, the judgment and decree of the Tribunal made in M.C.O.P. No.2090 of 2009 are confirmed.

As a sequitur, this Civil Miscellaneous Appeal fails and is accordingly dismissed. Costs made easy. Connected M.P. is closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

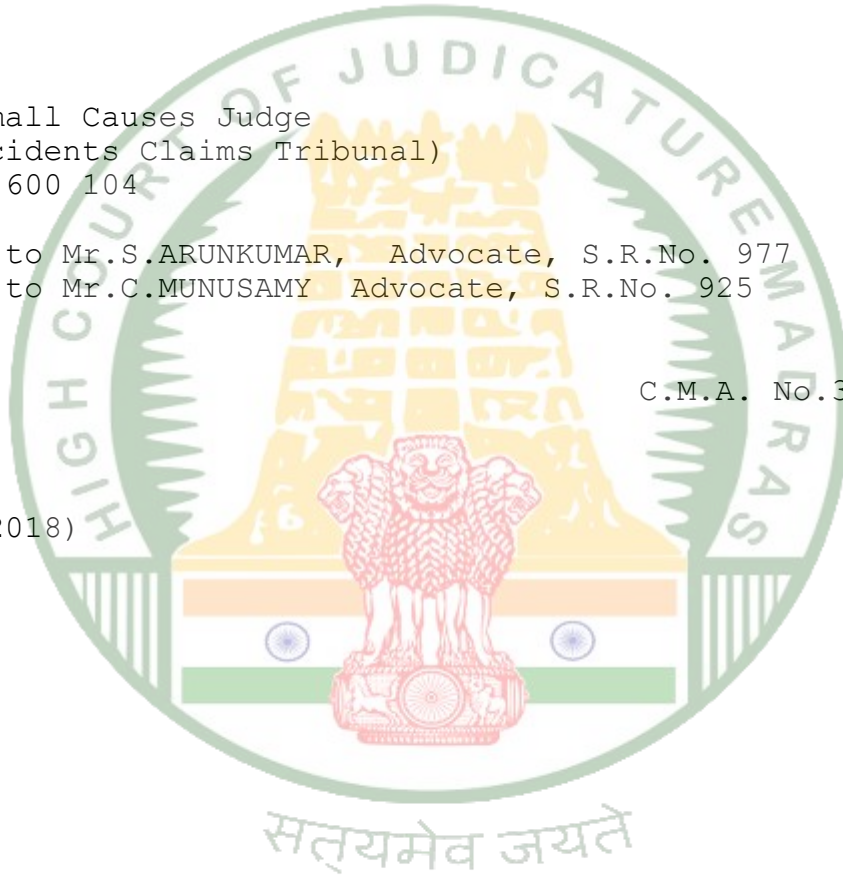
cad

To
The III Small Causes Judge
(Motor Accidents Claims Tribunal)
Chennai - 600 104

+1cc to Mr.S.ARUNKUMAR, Advocate, S.R.No. 977
+1cc to Mr.C.MUNUSAMY Advocate, S.R.No. 925

C.M.A. No.3252 of 2013

MG (CO)
TR(05/02/2018)



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