

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.400 of 2008

New India Assurance Company Ltd.,
Divisional Office,
Sheikpet Nadu Street,
Kancheepuram.

...Appellant

Vs

1. Shanthi
2. Minor Rajsekar
3. Minor Raja
4. Minor Sridhar
5. T.G.Pratheep Kumar

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accidents Claims Tribunal, (Fast Track Court No.2, Additional District Judge) at Kancheepuram in MACTOP.No.27 of 2004 dated 31.08.2007.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.T.P.Sankaran for
R1 to R4
R5 - No Appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 31.08.2007 passed by the Motor Accidents Claims Tribunal, Fast Track Court II, Additional District Judge at Kancheepuram in MCOP.No.27 of 2004.

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

(i) One Mohan died on 31.12.2003 as a result of an accident caused by a Tata Sumo vehicle bearing Registration No.TN-25-Y-2599 insured with the Appellant. The dependent of the deceased Mohan preferred a claim before the Motor Accidents Claims

Tribunal in MCOP.No.27 of 2004 seeking compensation of Rs.9,25,000/- which was restricted to Rs.6 lakhs against the appellant.

(ii) The Motor accident Claims Tribunal, by its award dated 31.08.2007 in MCOP.No.27 of 2004 directed the Appellant to pay the respondents 1 to 4 a sum of Rs.2,42,500/- together with interest at 7.5% per annum from the date of claim till the date of realisation.

(iii) Aggrieved by the Award dated 31.08.2007 passed by the Tribunal, the instant appeal has been filed by the Insurance Company.

3. Heard Mr.M.Krishnamoorthy, learned counsel for the Appellant Insurance Company. Till date, notice has not been served on the 5th respondent. Since the appeal pertains to the year 2008, and this Court is going to confirm the Award, there is no necessity to serve the notice on the 5th respondent.

4. Learned Counsel for the Appellant submits that despite violation of policy condition by the insured, the Tribunal has erroneously not applied the doctrine of pay and recovery. According to him, the driver of the vehicle which was insured with the Appellant, which caused the accident did not possess a valid driving licence. Despite calling upon the owner and the driver of the vehicle to produce the licence, both of them failed to produce the same. He drew the attention of this Court to the notice to produce which was marked as Ex.R1 before the Tribunal.

5. Further he contended that the driver as well as the owner of the vehicle remained exparte before the Tribunal and therefore it can be presumed that the driver of the vehicle did not possess a valid driving licence at the time of the accident. Since the respondent Nos. 1 to 5 are third parties to the contract of insurance, they did not have any say as regards the request made by the Appellant to apply the pay and recovery doctrine.

6. As seen from the evidence available before the Tribunal, the notice dated 08.08.2007 allegedly sent by the Appellant to the owner of the vehicle has been returned unserved and the returned cover has also been marked as Ex.R2 before the Tribunal. Therefore, it is evident that the owner of the vehicle has not been served with the notice dated 08.08.2007. Further the driver of the vehicle through his Advocate has also replied on 23.08.2007, denying that he was a driver of the vehicle which caused the accident.

7. Therefore, it is evidently clear as seen from the oral and documentary evidence available before the Tribunal that the Appellant has not been able to establish that the driver of

the vehicle did not possess a valid driving licence. The Tribunal has rightly rejected the contention of the Appellant that pay and recovery doctrine ought to be applied.

8. This Court is in agreement with the findings of the Tribunal and there is no infirmity in the same. There is no merit in the instant appeal and accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

9. It is represented that the entire award amount has been deposited before the Tribunal. The respondents 1 to 4 are permitted to withdraw the amount lying to the credit of MCOP as per the ratio apportioned by the Tribunal on filing an appropriate application.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msr/arb

To

1.Motor Accidents Claims Tribunal,
(Fast Track Court No.2, Additional District Judge)
Kancheepuram.

2.The Record Clerk,
VR Section,
High Court, Madras.

+1cc to Mr.T.P.Sankaran, Advocate sr.no.60926

+1cc to Mr.M.Krishnamoorthy, Advocate sr.no.60966

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rsv(co)
nr 22/10/2018

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