

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.745 of 2008

M/s United India Ins.Co.Ltd.,
Branch Office,
Nethaji Bye-pass Road,
Dharmapuri

Appellant/2nd Respondent

Vs

1. Padmanabhan,
2. Jeevita (minor)
3. Nareshkumar (minor)
- Minors R2 and R3 represented by
the 1st Respondent.
4. J.Babu Singh,
5. D. Kirubakaran
6. The New India Assurance Co.Ltd.,
No. 5G, Bye-pass Road,
Dharmapuri District.

Respondents/Petitioners/
Respondent 1, 3 & 4

Prayer: Petition filed under Section 173 of the Motor Vehicles Act, 1998 against the Judgment and decree dated 01.12.2004 made in M.C.O.P.1288 of 2001 on the file of the Motor Accident Claims Tribunal (District Judge) Salem.

For Appellant : Mr.T. Ravichandran

For Respondents : Mr.K.Kuppusamy for (R1 to R3)
Mr.R.Mohan Babu for
M/s.N.Vijayaraghavan for (R6)
R4 & R5-No appearance

JUDGMENT

The instant appeal has been filed challenging the Award dated 1.12.2004 passed in MCOP.No.1288 of 2001 on the file of the Motor Accident Claims Tribunal (District Judge, Salem).

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

a. An accident occurred on 10.08.2001 at 2.00 pm near Nagoor Andavar Shoe Mart at the Uthankarai to Krishnagiri Main Road resulting in the death of Rani who was a passenger in the Auto bearing Registration No.TN-09/B-0147 which collided with a Tractor.

b. The legal representatives of Rani made a claim before the Tribunal in MCOP. No.1288 of 2001 seeking compensation of Rs.5 lakhs from the appellant Insurance Company as well as the owner of the Auto.

c. The tribunal, by its Award dated 1.12.2004 directed the appellant to pay a sum of Rs.4,00,000/- as compensation to the respondents No.1 to 3 who are the legal representatives of the deceased Rani.

d. Aggrieved by the Award passed by the Tribunal, the instant appeal has been filed by the appellant/Insurance Company.

3. Heard Mr. T.Ravichandran , learned counsel for the appellant, Mr. K. Kuppusamy learned counsel for the respondents 1 to 3 and Mr.R. Mohanbabu, learned counsel for the 6th respondent.

4. According to the learned counsel for the appellant, the primary ground for challenge in the instant appeal is that there was no apportionment of liability between the appellant and the 6th respondent on account of contributory negligence under the impugned award.

5. According to the learned counsel for the appellant, the Tractor against which the Auto collided is insured with the 6th respondent and therefore, the 6th respondent is also equally liable to pay the compensation to the respondents 1 to 3 who are the claimants before the tribunal. Further, learned counsel for the appellant would submit that the tribunal has not applied the pay and recovery doctrine while awarding the compensation to the respondents 1 to 3.

6. According to the learned counsel for the appellant, the driver of the Auto which collided with the tractor did not possess a valid driving license and he possessed a driving licence only for a light motor vehicle and did not possess badge endorsement to drive the auto.

7. Per contra, learned counsel for the 6th respondent Insurance Company submits that there is a clear finding given by the tribunal that the entire negligence is on the part of the driver of the auto which is insured with the appellant and therefore, the 6th respondent Insurance Company being the insurer of the tractor is not liable to pay the compensation amount.

8. This Court, after considering the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels observes the following;

(a) There is a clear finding given by the tribunal as seen from paragraph 8 of the order that only due to the rash and negligent driving of the auto, the accident had occurred resulting in the death of the deceased Rani.

(b) The findings of the tribunal found in paragraph 8 of the order is extracted below;

'In EX.A.1 P.W.2 has stated that the accident occurred only due to the rash and negligent driving of the auto. P.W.2 in her evidence has also clearly deposed that the driver of the auto was responsible for the accident. She did not say anything about the 3rd respondent, that the accident was happened by the negligence of the driver of the 3rd respondent. So, it is safely concluded that the accident was only due to the negligent driving of the 1st respondent. When the vehicle of 1st respondent was duly covered by insurance at the time of accident, he is also liable to compensate the petitioners. Hence it is concluded that the respondents 1 and petitioner. Hence it is concluded that the respondents 1 and 2 are liable to compensate the petitioners. When the Vehicle is insured with the Second respondent as per EX.3 the decisions reported in 2004(C) CTC page 464 and 2004-1-L.W.page 16 filed by the 2nd respondent's counsel was not applicable to this case.'

(c) The tribunal has also given a clear finding that the auto carried four passengers apart from driver, though it can carry only 3 passengers + driver. The auto also did not possess badge for carrying passengers as a public carrier. As seen from the observations recorded by this court, it is clear that only on account of the rash and negligent driving of the auto by its driver, the accident has happened resulting in the death of the

deceased Rani. The owner of the auto has also violated the policy condition by permitting the auto driver to drive the auto without valid badge and an effective driving licence.

9. For the foregoing reasons, this Court is of the considered view that due to policy violation committed by the owner of the Auto, the tribunal ought to have granted liberty to the appellant to pay the compensation and recover the same from the owner of the vehicle, which the tribunal failed to do so under the impugned award.

10. In the result, the appeal is partly allowed and the award dated 1.12.2004 passed by the tribunal in MCOP.No.1288 of 2001 is hereby modified only to the extent that the appellant/Insurance Company is permitted to recover the compensation paid to the 1st to 3rd respondents who are the claimants and recover the same from the owner of the vehicle, the 4th respondent herein. No costs.

11. The respondents 1 to 3 are permitted to withdraw the compensation amount deposited by the appellant before the tribunal as per the apportionment made by the tribunal by filing an appropriate application.

12. This Civil Miscellaneous Appeal is modified in the above terms. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

TO

The Motor Accident Claims Tribunal,
District Judge, Salem.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.56157
+1cc to Mr.K.Kuppusamy, Advocate, S.R.No. 56233
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 56957

C.M.A.No.745 of 2008

GJ(CO)
GN(27/09/2018)