IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3311 of 2003
& C.M.P.No.21182 & 21183 of 20023

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

Vs.

1. Meenakshi
2. Pandiammal
3. Ganesan ..Respondents/Petitioners/1st Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988 against the Judgement and decree dated 17.11.2011 made in MCOP.No.217 of 2001 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Nagapattinam.

For Appellant : Mr. S.Arunkumar

For Respondents : No appearance

J U D G M E N T

The appellant is the second respondent in MCOP.No.217 of 2001 on the file of the Motor Accident Claims Tribunal, Principal District Court, Nagapattinam. Respondents 1 and 2 herein, who are wife and daughter, respectively, filed the claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of Udaiyar in the accident that took place on 08.05.2000. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to the rash and negligent driving by the driver of the Auto insured with the appellant herein and directed the appellant herein to pay a sum of Rs.2,30,000/- as compensation to respondents 1 and 2 herein. Against the said award, the Appellant / Insurance Company has come out with the present appeal.

2. The learned counsel appearing for the appellant / Insurance Company contended that the Tribunal having held that the accident had occurred only due to the rash and negligent driving on the part of the Auto, ought to have drawn adverse inference against the driver of the Auto and ordered pay and recovery.

3. Heard Mr.S.Arunkumar learned counsel appearing for the appellant and perused the materials available on record.

4. The Tribunal based on the materials available on record had come to the conclusion that the accident had occurred only due to the rash and negligent driving of the Auto, which was insured with the appellant herein. To arrive at such a conclusion, the Tribunal has relied upon the evidence of P.W.3-N.Murugesan, an eye-witness to the accident and also Exs.P-1 and P-3, in detail. It is not in dispute that at the time of accident the Auto was never insured with the appellant.

5. A perusal of the entire records would reveal that during 2001, while filing counter, the Insurance Company has raised a defence that there was no insurance coverage on the date of accident for the Auto belonging to the third respondent herein.

5.1. To this defence, no contra evidence has been let in either by the claimants (respondents 1 and 2 herein) or by the owner / driver of the Auto (third respondent herein). Hence the Tribunal ought to have drawn adverse inference upon the third respondent herein. But the Tribunal failed to do so. Therefore, this Court is of the opinion that the liability ought to have been fastened on the third respondent herein.

5.2. Added to the above, the Motor Vehicles Act is beneficiary legislation. As per the provisions of the Motor Vehicles Act, the claimants must realise the fruits of the decree and award should not be a paper decree. Under such circumstances also, the Tribunal ought to have ordered pay and recovery.

6. So far as the quantum fixed by the Tribunal at Rs.2,30,000/- is concerned, it has to be pointed out that the same has been assessed based upon the weight of evidence and probabilities of the case. Hence this Court is of the view that interference of the same is not necessary. Hence, the quantum fixed by the Tribunal is confirmed as such.



7. In the result, this Civil Miscellaneous Appeal is disposed of, directing the Insurance Company / appellant herein to pay the compensation to the claimants (at first) with liberty to recover the compensation from the third respondent herein / driver of the Auto (vehicle) involved in the accident.

8. The amount awarded by the Tribunal along with interests and costs is hereby confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer the said amount to the Savings Bank Accounts of the claimants / respondents 1 and 2 herein, as per the ratio of apportionment

made by the Claims Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed. The Insurance Company is at liberty to recover the compensation amount from the driver / owner of the Auto, involved in the accident.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal, Principal District Judge, Nagapattinam.

2. The Section Officer, VR Section, High Court, Madras.

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