

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1497 of 2009

National Insurance Co. Ltd.,
Post Box No.15,
Thanthai Periyar Complex,
Salem.

... 2nd Respondent/Appellant

vs.

1.Sudha
2.P.Subramani
3.Valli

...Petitioner/Respondent

...Respondents 1 & 3/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 06.02.2006 passed in MCOP.No.6 of 2004 on the file of the Motor Accident Claims Tribunal / Additional District Court, Dharmapuri.

Appellant : Mr.S.Arunkumar

Respondents : No appearance

J U D G M E N T

The appellant / National Insurance Company Limited, Salem is the second respondent in MCOP.No.6 of 2004 on the file of the Motor Accident Claims Tribunal / Additional District Court, Dharmapuri. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of one Selvam, husband of the first respondent and son of the third respondent in a road accident on 09.04.2002.

2. The case of the claimant is that on 09.04.2002, her husband was a pedestrian on Tiruvannamalai - Uthangarai Road and at about 04.00 p.m, a speeding tractor bearing Registration No. TN 29 B 3352 hit him, as a result whereof, he sustained fatal injuries and died in the Hospital on 15.04.2002.

3. According to the claimant, the rash and negligent driving of the driver of the tractor belonging to the second respondent was the cause of the accident and that since the said tractor was insured with the appellant / National Insurance Company Limited, the owner and the insurer of the tractor are jointly and severally liable to pay compensation.

4. The owner of the tractor remained absent before the Tribunal and therefore, he was set ex-parte. The appellant / National Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Additional District Judge / Motor Accident Claims Tribunal, Dharmapuri after analysing the evidence on record, awarded a compensation of Rs.3,07,000/- together with interest at the rate of 7.5% per annum to the claimant. The Tribunal further held that the liability of the owner and the insurer is joint and several. Questioning the liability to pay compensation, the National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.S.Arunkumar, learned counsel appearing for the appellant / National Insurance Company Limited contended that since the tractor alone was insured with them and not the trailer, there is a violation of policy condition and hence the Insurance Company is not liable to pay compensation. He also relied on the decision in "The Oriental Insurance Co. Ltd. vs. N.Chandrashekar and Ors" reported in 1997 ACJ 512 wherein, it has been held thus:

"As a trailer is also a motor vehicle the Statute requires that it should also be insured before it can be used in a public place. In respect of the tractor and the appellant would be liable to indemnify the insured in respect of risk arising out of the use of tractor and trailer."

6. No appearance on behalf of the respondents.

7. In the instant case, the specific contention is that the tractor hit the deceased and nowhere it is stated that the tractor was attached with a trailer. In the decision in "The Oriental Insurance Co. Ltd. vs. N.Chandrashekar and Ors" reported in "1997 ACJ 512" (cited supra), the deceased was travelling in the trailer and the facts of the present case are entirely different. In the circumstances the liability fastened on the Insurance Company by the Tribunal cannot be found fault with.

8. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the

appellant and no cross objection / appeal was filed by the claimant. A perusal of the award also shows that it is not on the higher side and in the facts and circumstances, the appeal fails and is dismissed.

9. In the result,

- (i) The Civil Miscellaneous Appeal is dismissed. No costs.
- (ii) The orders passed by the Tribunal is upheld.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
The Additional District Judge,
Dharmapuri.

2.The Section Officer,
VR Section, High Court, Chennai-104.

+1cc to Mr.S.Arunkumar, Advocate Sr.94223

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pvs[co]
srg 27/07/2020

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