

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1548 of 2009
and
MP.No.1 of 2009

The Oriental Insurance Co. Ltd.,
Branch Office No.28,
Salem road, Coonoor.

...Appellant/2nd respondent

vs.

1.Umadevi ... Respondent1/ Petitioner 1
2.Minor Karthika ... Respondent2/ Petitioner 2
3.Minor Muthu Rathinam ... Respondent3/ Petitioner 3
(Minors 2 and 3 represented by
guardian mother and
next friend, Umadevi)

4.M/s.Kannan Brothers,
Kannimar Koil Thottam,
Kuppandampalayam,
Tiruppur Taluk.

... Respondents/ Respondent1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 02.07.2008 passed in MCOP.No.1204 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.4, Coimbatore at Tiruppur.

For Appellant : Mr.M.Raja shekar

For Respondents : Mr.MA.P.Thangavel for R1 to R3

No appearance for R4

JUDGMENT

The Oriental Insurance Company Limited, the second respondent in MCOP.No.1204 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.4, Coimbatore at Tiruppur has filed the present appeal. The respondents 1 to 3 filed the said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of one Rajasekaran, husband of the first claimant and father of the claimants 2 and 3 in a road accident that took place on 02.10.2005.

2. The case of the claimants is that on 02.10.2005, the deceased Rajasekaran was riding his two wheeler bearing Registration No. TN 39 L 4819 on Palladam - Chettippanayam road. At about 17.30 hours, a speeding tempo van bearing Registration No. TN 39 H 8384 belonging to the fourth respondent and insured with the present appellant hit the two wheeler, as a result of which, the deceased Rajasekaran fell down from his two wheeler and died on the spot. According to the claimants, the rash and negligent driving of the driver of the tempo van belonging to the fourth respondent was the cause of the accident and that since the said tempo van was insured with the Oriental Insurance Company Limited, both the owner and the insurer are jointly and severally liable to pay compensation to them.

3. The owner of the tempo van remained absent before the Tribunal and therefore he was set *exparte*. The Oriental Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Judge, Fast Track Court No.4 / Motor Accident Claims Tribunal, Coimbatore at Tiruppur, awarded a compensation of Rs.6,26,200/- to the claimants together with interest at the rate of 7.5% per annum. The Tribunal also directed the Oriental Insurance Company Limited to pay the compensation to the claimants and then recover the same from the owner of the tempo van, since the driver of the tempo van was not in possession of a valid driving licence and a badge on the date of the accident. Aggrieved over the orders passed by the Tribunal, the Oriental Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.M.Rajasekar, learned counsel appearing for the appellant and Mr.MA.P.Thangavel, learned counsel appearing for the respondents 1 to 3.

5. In the decisions in (i) Oriental Insurance Company Limited Vs. Nanjappan and others reported in 2004 (2) CTC 464, (ii) Shamanna vs. Divisional Manager, The Oriental Insurance Co. Ltd. in Civil Appeal No. 8144 of 2018, and (iii) Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC), the Hon'ble Supreme Court of India has held that if the driver of the offending vehicle does not possess a valid driving licence on the date of accident, the insurer must be directed to satisfy the award with a liberty to recover the same from the owner of the vehicle. In fact, the decision in National Insurance Company Limited Vs. Swarn Singh and others reported in (2004) 3 (SCC) 297 was followed in the decision in Kempaiah and others Vs. S.S.Murthy and another reported in 2017 (1) TN MAC 737 (SC).

6. In the facts and circumstances of the present case, the orders passed by the Tribunal directing the Oriental Insurance Company Limited to pay the award amount in the first instance and then recover the same from the owner of the tempo

van is perfectly in order.

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The order passed by the Tribunal is upheld.

(iii) The present appellant / Oriental Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.6,26,200/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.1204 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.4, Coimbatore at Tiruppur within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the tempo van bearing Registration No. TN 39 H 8384 in the manner known to law.

(iv) On such deposit being made, the respondents 1 to 3 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mbi
To

The Motor Accidents Claims Tribunal,
The Fast Track Court No.4,
Coimbatore at Tiruppur.

+1cc to Mr.M.Raja Sekhar , Advocate SR.No. 82878

+1cc to Mr.Ma.P.Thangavel , Advocate SR.No. 8342

CMA.No.1548 of 2009
and
MP.No.1 of 2009

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A.SK(10/03/2020)