

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.01.2019

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1711 of 2015
and M.P.No.1 of 2015

The National Insurance Company Limited
Office No.706, Thenkasi Road,
Rajapalayam-625 117. ..Appellant/3rd Respondent

Vs

1.Pazhaniswamy

2.Krithiga

3.Indhu

..Respondents 1 to 3/Petitioners 1 to 3

4.Sethu

..Respondent 4/1st Respondent

5.Andrews

..5th Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.01.2013 made in M.A.C.T.O.P.No.526 of 2011 on the file of Motor Accidents Claims Tribunal, 2nd Additional District Court, Erode.

For Appellant : Mrs.N.B.Surekha

For R1 to R3 : Mr.P.Parthikannan
for Mr.S.Kaithamalai Kumaran

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 29.01.2013 made in M.A.C.T.O.P.No.526 of 2011 on the file of Motor Accidents Claims Tribunal, 2nd Additional District Court, Erode.

2.The appellant-Insurance Company is 3rd respondent in M.A.C.T.O.P.No.526 of 2011 on the file of Motor Accidents Claims Tribunal, 2nd Additional District Court, Erode. The respondents 1 to 3 filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Radhamani,

who died in the accident that took place on 12.07.2011. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 4th respondent-driver of the car belonging to the 5th respondent and directed the appellant-Insurance Company to pay a sum of Rs.3,35,400/- as compensation to the respondents 1 to 3 at first instance and recover the same from the fifth respondent. Against the said award dated 29.01.2013 made in M.A.C.T.O.P.No.526 of 2011, the appellant-Insurance Company has come out with the present appeal challenging the liability fastened on them.

3.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal has erred in fixing the negligence on the 4th respondent-driver of the car belonging to the 5th respondent and erroneously directed the appellant to pay compensation to the respondents 1 to 3 at first instance and recover the same from the fifth respondent. The Tribunal has failed to see that there is no privity of contract of insurance between the appellant and 5th respondent-owner of the car on the date of accident. The 5th respondent issued cheque dated 05.07.2011 for the premium amount payable for the policy from 08.07.2011 to 07.07.2012. The appellant issued policy on a specific condition that policy is issued subject to realisation of cheque and in the event of cheque being dishonoured, the policy would be automatically cancelled. The cheque issued by the 5th respondent being dishonoured to his knowledge, the Tribunal has erred in fixing liability on the appellant and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the respondents 1 to 3-claimants contended that the respondents 1 to 3 are claiming compensation for the death of one Radhamani, who is third party to the insurance policy and the appellant did not intimate the 5th respondent about the cheque being dishonoured and cancellation of policy issued prior to the date of accident. The Tribunal has considered the evidence of PW2-eye witness and held that the accident occurred only due to rash and negligent driving by the 4th respondent-driver of the car and the appellant as the insurer of the car is liable to pay compensation. The findings of the Tribunal are proper and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

6.As far as negligence fixed on the part of the 4th respondent-driver of the car is concerned, the respondents 1 to 3 have examined PW2-eye witness to prove their case that the

accident occurred only due to rash and negligent driving by the 4th respondent. The appellant has not examined 4th respondent-driver of the car or any other eye witness to disprove the contention of the respondents 1 to 3, the manner in which the accident has occurred. The Tribunal appreciating the evidence on record in proper perspective, has rightly held that the accident occurred only due to rash and negligent driving by the 4th respondent-driver of the car.

7.As far as liability is concerned, the contention of the learned counsel appearing for the appellant is that the policy was issued on a specific condition that the policy is subject to realisation of cheque and if the cheque is dishonoured, the policy would be automatically cancelled. In the present case, the cheque dated 05.07.2011 was dishonoured only on 28.07.2011. The appellant has cancelled the policy only after 28.07.2011 and informed the same to the 5th respondent, which was received by him on 19.08.2011. The accident occurred on 12.07.2011 and on the date of accident, the cheque was not dishonoured and 5th respondent was not intimated about the dishonour of cheque and cancellation of policy. There is no error in the finding of Tribunal fixing liability on appellant and directing the appellant to pay compensation at first instance and recover the same from the 5th respondent.

8.In the result, the Civil Miscellaneous Appeal is dismissed and award of the Tribunal is confirmed. The appellant-Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs at first instance and recover the same from the 5th respondent, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3-claimants are permitted to withdraw their respective share amounts awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

kj/rst

To

The Motor Accidents Claims Tribunal,
2nd Additional District Judge, Erode.

Copy To : The Section Officer, VR Section, High Court, Madras-104

+1cc to Mr.AK.Kumarasamy, Advocate SR.No.5100

+1cc to Mrs.B.Surekha, Advocate SR.No.5124

C.M.A.No.1711 of 2015
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BS (CO)
GMY (20/06/2019)



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