



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON :01.03.2019

JUDGMENT DELIVERED ON :10.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.3607 OF 2011

1.Sivakami
2.Kannammal

...Appellants/Claimants

vs.

1.R.Palanisamy
2.R.Murugesan
3.The United India Insurance Co.Ltd.,
Dharapuram.

... Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 07.10.2008 made in M.C.O.P.No.1464 of 2000 on the file of the Motor Accidents Claims Tribunal, (Additional District & Session Judge, Fast Track Court No.III, Dharapuram.

For Appellant : Mr.N.S.Sivakumar

For Respondents : M/s.R.Sreevidhya for R3
R1 & R2 - Exparte

JUDGMENT

The appellants are the claimants in MCOP.No.1464 of 2000, on the file of the learned Additional District and Session Judge, Dharapuram, Motor Accidents Claims Tribunal/Fast Track Court No.III, Dharapuram. They are filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- by the appellants/claimants i.e., L.R's of the deceased.

2. The brief case of the appellants/claimants are as follows:



(i) The deceased was aged about 22 years on the date of the accident. He was cleaner of the lorry and was earning a sum of Rs.3,000/- per month.

(ii) On 19.06.2000, at about 11.00 pm, the deceased was proceeding as a cleaner in the lorry bearing Registration No.TAN 4232 , when the lorry was coming near Munappan Koil, Annoor, Karur to Dharapuram Road, the first respondent-driver drove the lorry in a rash and negligent manner and capsized on the road side, due to which, the deceased Subramaniam sustained grievous injuries all over the body.

(iii) Immediately after the accident, the deceased was admitted in Government Hospital, Erode. The deceased was treated as an in-patient in that Hospital.

(iv) According to the deceased, the rash and negligent driving of the driver of the lorry bearing Registration No. TAN 4232 was the cause of the accident and that since, the said lorry was insured with the National Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to the claimants being the legal heirs of the deceased.

3. The owner and driver of the said lorry were absent before the Tribunal and therefore, they were set ex-parte. Before the Tribunal, P.W.1 and P.W.2 were examined and Exhibits P1 to P4 were marked. On behalf of the respondent, Assistant from the RDO was examined as R.W.1 and Insurance Company was examined as R.W.2. No documentary evidence was marked on the side of the respondents before the Tribunal.

4. On a consideration of both oral and documentary evidence, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver of the first respondent's lorry wherein the deceased was working as a Cleaner and also that on the date of the accident, the driver did not possess valid driving licence, exonerated the Insurance Company and directed the compensation to be paid by the respondents 1 and 2 before the Tribunal. Hence, this appeal.

5. Heard both sides and perused the materials available on record.

6. The factum of the accident and rash and negligent driving of the driver of the lorry and the finding thereon by the Tribunal are not in dispute.

7. The third respondent-Insurance Company would submit that as per the evidence of R.W.1, the licence of the driving of the



lorry has expired on 24.01.1999 and was not renewed and accident has taken place on 19.06.2000 and hence, the Insurance Company is not liable.

8. After hearing both the parties and also taking note of the decision of the Hon'ble Apex Court held in 2008 ACJ 1498 [National Insurance Company Limited Vs. Geetha Pat], wherein it was held that in case of third party's claims, pay and recovery can be ordered. Further, the Apex Court in the decision reported in 2008 (1) TN MAC 322 [New India Assurance Company Vs. Darsana Devi], wherein it was held that even in case of violation of policy, the insurer can be directed to pay the compensation at the first instance with liberty to recover the same from the owner of the vehicle.

9. In this case, the driving licence however was not renewed and the same was not renewed on the date of the accident and therefore, it amounts to violation of the contractual clause and accordingly, the Insurance Company is directed to pay the recovery the compensation.

10. After going through the compensation awarded by the Tribunal and taking note of the date of the accident and the relevant heads of the compensation, I am of the considered view that the award amounts therein are found to be just and reasonable and they do not warrant any interference from this Court and hence, the clause 3 of the decree of the Tribunal that the Insurance Company is not liable to pay the compensation, is hereby set aside and the Insurance Company is hereby required to pay the compensation and recover the same by way of Execution Proceedings. In other respects, the award of the Tribunal is confirmed.

11. In the result,

(i) The Civil Miscellaneous Appeal is allowed to the limited extent indicated above. No costs.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The order passed by the Tribunal directing the owner of the lorry bearing Registration No. TAN 4232 to pay compensation to the appellants/claimants is set aside.

(iv) The third respondent/United India Insurance Company Limited is directed to deposit the entire compensation awarded by the Tribunal i.e., Rs.3,80,000/- 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 M.C.O.P.No. 1464 of 2000,



on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge), Fast Track Court No.III, Dharapuram within a period of eight weeks from the date of receipt of a copy of this order and recover the same from the owner of the vehicle.

(v) On such deposit being made, the appellants/claimants are permitted to withdraw the entire amount, after following due process of law, as apportioned by the Tribunal.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nvi

To

1. The Motor Accident Claims Tribunal,
The Additional District and Sessions Judge,
Fast Track Court No.III, Dharapuram.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to M/s.R.Sreevidhya, Advocate, S.R.No.47672
+lcc to Mr.N.S.Sivakumar, Advocate, S.R.No.46564

C.M.A.No.3607 of 2011

RSI (CO)
NR/12/12/2019