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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :25.02.2019

Judgment Pronounced on :16.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3659 of 2011

and

M.P.No.1 of 2011

The Divisional Manager,
National Insurance Company Limited,
Jawaharlal Nehru street,
Puducherry

...Appellant/2nd Respondent

Vs.

1.Saraswathy

2.Anbarasan

3.Arunkumar (Minor)

rep.by his next friend

mother first respondent

... Respondent 1 to 3/Claimants

4.A.Velmurugan

(R-4 exparte before the Tribunal)

... 4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 01.06.2011, in M.C.O.P.No. 703 of 2006, on the file of the Motor Accidents Claims Tribunal, (Principal District Judge) at Puducherry.

For Appellant : Mr.R.Ravichandran

For Respondents : No appearance

J U D G M E N T

The Insurance Company is the appellant herein.

2. This appeal is filed by the Insurance Company challenging the liability on the ground that in respect of the accident, there is no valid permit and hence, it is contended that the Insurance Company is not liable to pay the compensation.

3. The short facts that are necessary for determination of this appeal are as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>

The respondents 1 to 3 herein are the legal



representatives of the deceased Selvaraj and they filed M.C.O.P alleging that i) at the time of the accident, the 1st respondent/claimant's husband Selvarasu aged about 45 years was working as an Accountant in a Toddy Shop and was earning a sum of Rs.5,500/- per month.

ii) on 07.02.2006 at about 19.30 hours, while he was going in by walk to his home in Moorthikuppam Main Road, near Viji wines, Mullodai, the Auto Rickshaw bearing Registration No.TSR 2091 came in the opposite direction in a rash and negligent manner and dashed against the deceased Selvarasu. Because of that, the said Selvarasu was thrown out of the road and he sustained grievous injuries.

iii) Immediately, he was taken to Government General Hospital, Cuddalore and he was referred to Government General Hospital, Pondicherry. There, because of the injuries, he died in the hospital on 01.03.2006.

iv) The said accident happened only because of the rash and negligent driving of the driver of the Auto Rickshaw.

4. The Insurance Company filed counter affidavit denying the manner of the accident and inter-alia contended that the place of the accident being at Union Territory of Puducherry, whereas, permit the valid only for plying in the Cuddalore District and hence, it is contended that there is a violation of permit condition and also in violation of the terms and conditions of the policy and accordingly, seeks exoneration from the liability.

5. The learned counsel for the respondents 1 to 3/claimants would submit that since the place of the accident and the border of the Cuddalore District is false and so far as non-possession of permit for the offending vehicle to ply in the limits of Puducherry is concerned, though R.W.1 Pichamuthu has given evidence in this regard, he had accepted the distance between Reddichavady in Cuddalore District where the offending vehicle was having permit and the accident spot at Muliodai in Puducherry is 3 kms. A perusal of the copy of permit Exhibit A5 would disclose that the Regional Transport Authority, Cuddalore had permitted the offending vehicle (Auto-Rickshaw) to ply within 30 kms, radius from the Central point of the Union Territory District border/ Cuddalore State Border.

6. It appears that the claim petitioners have marked Exhibit A1 F.I.R, Exhibit A2 photo copy of Insurance Certificate, Exhibit A3 Motor Vehicle's Report, Exhibit A4-Postmortem Certificate and Exhibit A5 permit for vehicle issued by the Regional Transport Authority, Cuddalore.

7. Taking into consideration the fact that as per Exhibit A5, the vehicle can ply, namely auto-rickshaw can ply within the jurisdiction of the Cuddalore District and he



cannot go beyond the Cuddalore District.

8. Admittedly, i) the place of the accident as could be seen from Exhibit A1, Exhibit A1 F.I.R and Exhibit A3 Motor accident Inspector's Report from the Puducherry, lies in the Union Territory of Puducherry and the Insurance Company has specifically raised a plea of violation of the permit condition in the counter statement.

ii) It is to be stated that the onus to prove that a vehicle was having a valid permit, is not on the claimants, but it is for the insurer to establish that there is a breach of policy condition and that it is not liable.

iii) In order to substantiate the said plea, they have examined R.W.1 Assistant Manager of the appellant/Insurance Company and they also demonstrated through Exhibit A1 and A3 that the place of the accident lies within the jurisdiction of Union Territory of Puducherry. While permit granted for the auto (the offending vehicle) is only Revenue District, Cuddalore, Tamil Nadu State as could be seen from Exhibit A5.

9. Accordingly, this Court holds that the Insurance Company had discharged its onus to substantiate its plea that there is a violation of the permit condition.

10. In the decision reported in 2004 (2) TNMAC 196 (SC) [National Insurance Company Limited Vs.Challa Bharathamma], the Apex Court has held that Autorickshaw therein met with an accident. Insured had not obtained permit to ply the vehicle and that insurer is not liable. However, the Supreme Court directed the insurer to deposit the amount and recover it from the insured by initiating proceedings before the Executing Court.

11. Hence, the Insurance Company is not liable to pay the compensation. The Insurance Company therein was required to pay the compensation awarded by the Tribunal and thereafter, recover the amount from the owner of the auto in the Execution Proceedings.

12. In the result,

i) This Civil Miscellaneous Appeal is partly allowed. No costs. consequently, connected Miscellaneous Petition is closed.

iii) The quantum awarded by the Tribunal is also hereby confirmed.

ii) In the case on hand, the owner/fourth respondent herein is liable to pay the entire compensation as ordered by the Tribunal and jointly and severally liable to pay the award, "pay and recovery" clause in respect of the appellant/Insurance Company is set aside.



her share in respect of the compensation awarded by the Tribunal.

v) As far as the share of the minor respondent, namely third respondent herein, is concerned, the same shall be deposited in any Nationalised Bank in any interest bearing Fixed Deposit Scheme and the interest accrued thereon shall be withdrawn by the first respondent periodically and the said Fixed Deposit scheme shall be renewed periodically till the minor attains majority.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge,
The Motor Accidents Claims Tribunal,
Puducherry.

+1cc to Mr.R.Ravichandran, Advocate, S.R.No. 38342

C.M.A.No.3659 of 2011 and
M.P.No.1 of 2011

KS (CO)
GN(19/11/2019)