

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.04.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.521 of 2011

The Oriental Insurance Co. Ltd.,
Post Box No.3821, India Life Building,
Trichy Road, Coimbatore. ... Appellant/3rd Respondent

Versus

1.Vidya devi ...Petitioner
2.Gunaseelan
3.K. Muralidharan
4.M.Dhandapani ...Ist and 2nd Respondent
5.Govindaraj
6.Lakshmi ...4th to 6th Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree made in MACT.O.P.No.108 of 2004 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge, Fast Track Court No.IV, Erode at Bhavani dated 31.08.2004.

For Appellant : M/s.M.Krishnamoorthy

For Respondents : No Appearance

JUDGMENT

The Insurance company is the appellant herein challenging the Judgment and Decree dated 31.08.2004 made in MACT.O.P.No.108 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.IV, Erode at Bhavani.

2. The first respondent herein is the wife of the deceased, the second respondent is the driver of the alleged vehicle

involved in the accident, the third respondent is the owner of the vehicle, the fourth respondent is the rider of the vehicle, the fifth and sixth respondents are the father and mother of the deceased respectively.

3. The short facts that are essential for the disposal of this appeal is that on 15.05.1999 at about 01.00 hours, the deceased namely, Annadurai, after completing his work in the factory, was returning to his home on the Mettupalayam Road at Paraianaickanpalayam near Gas Company in a Yamaha Motor Cycle bearing Registration No.TCI-9093 as a pillion rider driven by one Gunaseelan, who is the second respondent herein from north to south on the left side of the road. At that time, the 4th respondent namely Dhandapani being the rider of Scooter bearing Registration No.TN 37F-6939 drove the same in the opposite direction from South to north and colluded with the second respondent's vehicle and thereby, the deceased was thrown out and sustained bleeding and grievous injuries on his head and all over the body and succumbed to injuries in the CMC Hospital on 19.05.2009. Hence, the wife of the deceased has filed a claim petition in MACT.O.P.No.108 of 2004 before the Motor Accidents Claims Tribunal, (Additional District Judge), Fast Track Court No.IV, Erode at Bhavani, claiming a sum of Rs.6,00,000/- compensation.

4. Before the Tribunal, on the side of the claimant, the wife of the deceased was examined as P.W.1 and five documents were marked as Exs.P1 to P5. On the side of the respondents, one witness was examined as R.W.1 and one document was marked as Ex.R.1.

5. The third respondent before the Tribunal has filed a counter statement alleging that there is no policy coverage for the vehicle insured with them and they does not admit that the accident had occurred only due to the negligence of the first respondent.

6.The respondents though served by substituted service, paper publication was effected and affidavit of service was filed and names of the respondents were also printed in the cause list, but none appears for them.

7. Learned counsel appearing for the appellant/insurance would contend that though the insurance company is arrayed as third respondent before the Tribunal, as there was no policy coverage in respect of the second respondent's vehicle driven by the first respondent, and hence appellant/the insurance company had issued Ex.R.1 legal notice calling upon the owner of the vehicle to produce the insurance detail. But despite the receipt of notice calling upon to produce the details of

insurance policy, they have failed to produce the same and drawn my attention to the counter statement of the insurance company that it has, taken a specific plea before the Tribunal that the vehicle involved in the accident is not insured with the third respondent insurance company. Thus, they have challenged award on the point of liability.

8. The Tribunal, based upon the evidence of P.W.1, who is nor even an eye-witness, and Ex.P.4-copy of judgment, has come to the conclusion that at the time of the accident, three persons were travelled in the Yamaha motor cycle driven by the first respondent. The Tribunal has held that the deceased was travelling as a second pillion rider next to the pillion rider Senthilkumar and relied upon the documentary evidence of Ex.P.1 and P.4 and also held that the rider of the Yamaga motorcycle, the first respondent before the Tribunal has driven two wheeler in a rash and negligent manner and thereby caused the accident and in which, fatal injury was caused to the deceased.

9. It appears from the records that in the proceedings before the Tribunal, no policy particulars relating to the vehicle [Yamaha motorcycle] have been furnished and the legal notice to produce the insurance particulars is filed and marked. In spite of marking the legal notice Ex.R.1, however, it appears that, based upon the documentary evidence Ex.P.1 and P.4, the Tribunal, has held that the deceased was travelling in Yamaha motorcycle which was driven by the first respondent and the pillion rider namely, Senthilkumar and the deceased travelled as a third passenger viz., second pillion rider and the same amounts to violation of policy condition. Furthermore, in the absence of any positive evidence to show coverage of policy, the Tribunal has gone to an extent of ordering pay and recovery as if there is a policy, which is not sustainable in law. It appears that a finding was rendered by the Tribunal as if there is policy coverage with respect to the vehicle in which the deceased was travelled and hence, the Tribunal has committed a gross error in awarding pay and recovery. The clause of pay and recovery can be invoked only when there is a policy coverage and the terms and conditions of the policy have been violated and not otherwise.

10. It is seen from the records that it is a specific plea was raised by the insurance company that the claim petition has been filed against the insurance company on the premise that the motorcycle bearing Registration No.TC-01-8083, driven by the second respondent herein owned by the third respondent herein was insured with the appellant and the said plea has been specifically denied by the insurance company besides they were also issued Ex.R.1-legal notice calling upon the owner of the

said vehicle to furnish the details of the policy and the same has not been complied with by the owner and when the existence of policy coverage itself is not proved, the appellant/insurance company cannot be mulctated with liability to pay any compensation and hence, on the evidence on record, this Court has no hesitation to hold that in the absence of any policy particulars relating to the vehicle have been filed in spite of Ex.R.1-legal notice issued by the insurance company and in the absence of any proof of evidence relating to existence of insurance policy, the third respondent vehicle, the order of Tribunal in directing pay and recover does not arise.

11. In this view of the matter, the order directing pay and recovery against the appellant/insurance is held to be not sustainable in law and the same is hereby vacated. Consequently, the insurance company is exonerated from its liability.

12. In this result,

(i) this Civil Miscellaneous Appeal is partly allowed and the Appellant/Insurance Company is exonerated from liability fixed against them.

(ii) the order dated 31.08.2004 passed by the Motor Accidents Claims Tribunal, (Additional District Judge), Fast Track Court No.IV, Erode at Bhavani in MACT.O.P.No.108 of 2004 is modified to the limited extent as indicated above.

(iii) the owner of the vehicle and driver of the vehicle are jointly and severally liable to pay compensation to the claimants.

(iv) No order as to costs.

(v) Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

smn

To

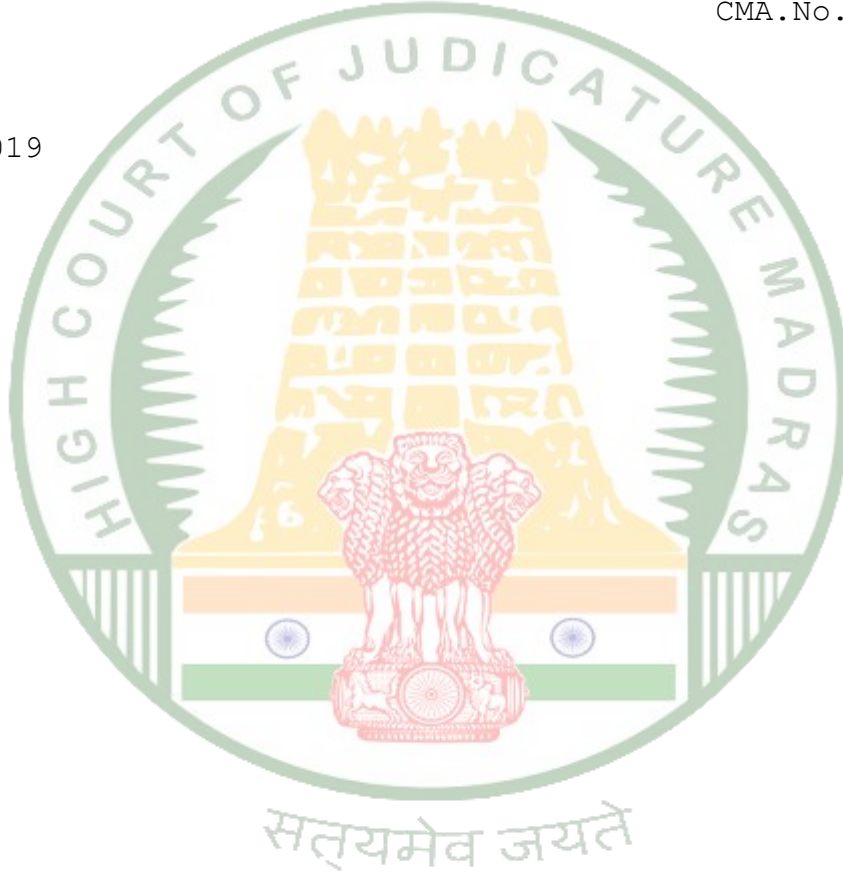
1.The Motor Accidents Claims Tribunal,
Additional District Judge cum Fast Track Court No.IV
Erode, Bhavani.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to Mr.M.Krishnamoorthy Advocate sr31934

CMA.No.521 of 2010

spd(co)
aa03/10/2019



WEB COPY