

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 973 of 2015
and M.P. No. 1 of 2015

The Branch Manager,
United India Insurance Co. Ltd.,
Chidambaram.

... 2nd Respondent/Appellant

Vs.

1.Radha

2.Vellaiyammal

3.Sumathi

4.Annadurai ... Petitioners/Respondents

5.Tamilmani ... 1st Respondents/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 19.08.2014, made in M.C.O.P.No.95 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Chidambaram.

For Appellant : Mr. S. Arun Kumar

For Respondents: No appearance (For R1 to R4)

Mr. R. Manoharan (for R5)

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed against the award dated 19.08.2014, made in M.C.O.P. No. 95 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Chidambaram.

2.The appellant is the 2nd respondent in M.C.O.P. No. 95 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal), Chidambaram. The respondents 1 to 4 who are the claimants filed the said claim petition, claiming a sum of Rs.5,50,000/- as compensation for the death of one T. Pattusamy, who died in the accident that took place on 13.07.2009.

3. According to the respondents 1 to 4, on 13.07.2009 at 8.30 p.m, when the deceased was riding his bicycle in a careful manner, the driver of the Tractor-Trailer belonging to the 5th respondent drove the same in a rash and negligent manner and dashed against the bicycle of the deceased and caused accident, in which the said T. Pattusamy sustained severe head injuries and died on the spot. Thus, the respondents 1 to 4 filed claim petition against the 5th respondent as owner of the vehicle and appellant as insurer of the vehicle.

4. The 5th respondent filed counter statement and denied all the averments made by the respondents 1 to 4. According to the 5th respondent, the driver of his vehicle drove the same in careful manner and the deceased himself without following any rules, crossed the road and invited the accident. The accident occurred only due to the negligence on the part of the deceased. At the time of accident, the driver of his vehicle had valid driving license. The vehicle was insured with the appellant, the appellant is only liable to pay the compensation to the respondents 1 to 4 and prayed for dismissal of the claim petition as against the 5th respondent.

5. The appellant filed counter statement and denied all the averments made by the respondents 1 to 4. According to the appellant-Insurance Company, the accident occurred only due to the negligence on the part of the deceased and not due to negligence on the part of the driver of the vehicle belonging to the 5th respondent. At the time of accident, the offending vehicle was not having proper registration number was not insured with the appellant. The driver of the vehicle did not possess valid driving license. Hence, the appellant is not liable to pay the compensation to the respondents 1 to 4 and prayed for dismissal of the claim petition.

5(i). The appellant filed additional counter affidavit and contended that the insurance policy for the Tractor-Trailer involved in the accident was issued only on 13.07.2009, the date of accident. According to the report of the Crime Investigation Department, the insurance policy was created on the next day of the accident, as though it was issued on the date of accident. Hence, on the date of accident, the vehicle was not insured with the appellant. The 5th respondent has permitted the driver to drive the Trailer, which was not registered, along with the Tractor. The appellant is not liable to pay the compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the respondents 1 to 4 examined two witnesses as P.W.1 and P.W.2 and marked 5 documents as Exs.P1 to P5. The appellant examined one evidence as R.W.1 and marked one document as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Tractor-Trailer belonging to the 5th respondent and directed the appellant to pay a sum of Rs.1,15,000/- as compensation to the respondents 1 to 4.

8.Challenging the liability fastened on them by the award dated 19.08.2014, made in M.C.O.P.No.95 of 2010, the appellant-Insurance Company has come out with the present appeal.

9.Learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to see that at the time of accident, the 5th respondent attached unauthorized Trailer with Tractor. The Tribunal based on the oral testimony, erred in fixing liability on the appellant-Insurance Company, instead of fixing the liability on the owner of the Trailer. The Trailer being uninsured with the appellant, the 5th respondent-owner of the Trailer is liable to pay the compensation and prayed for setting aside the portion of the award fixing liability on the appellant-Insurance Company to pay the compensation.

10.Heard learned counsel appearing for the appellant-Insurance Company as well as the 5th respondent and perused the materials available on record. Though notice has been served on the respondents 1 to 4 and their names are printed in the cause-list, there is no representation for them either in person or through counsel.

11.It is the contention of the appellant that the Tribunal having held that the Trailer attached to the Tractor was uninsured at the time of accident, ought to have directed the 5th respondent, owner of the Tractor-Trailer to pay the compensation. The said contention is contrary to the materials on record. From the materials on record, it is seen that the Tractor belonging to the 5th respondent was driven in a rash and negligent manner and dashed against the cycle in which the deceased was riding and caused the accident. The respondents 1 to 4 examined one Mani, an eye-witness as P.W.2 and marked FIR registered against the driver of the tractor as Ex.P4. The Tribunal considering the fact that the accident occurred due to rash and negligent driving by the driver of the Tractor and Tractor only dashed against the cycle, held that the appellant as insurer of the Tractor is liable to pay compensation. R.W.1, examined by the appellant did not depose that the accident was due to attachment of Trailer to the Tractor. The Tribunal considering the evidence of R.W.1, oral and documentary evidence let in by the respondents 1 to 4, held that the attachment of Trailer to the Tractor will not in any way affect the claim of

the respondents 1 to 4 for claiming compensation against the appellant. The said finding is not erroneous or perverse, warranting interference by this Court.

12. For the above reason, the appeal is dismissed and the amount awarded by the Tribunal at Rs.1,15,000/- along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, 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 4/claimants are permitted to withdraw their share of the award amount along with interest and cost, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa
To

1. The Subordinate Judge,
(Motor Accident Claims Tribunal),
Chidambaram.

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

+1 CC to Mr.S.Arun Kumar, Advocate sr 103699
+1 CC to Mr.R. Manoharan, Advocate sr 103220
+1 CC to Mr.J. Chandran, Advocate sr 103333.

C.M.A.No. 973 of 2015

PVS (CO)
SP(13/08/2020)

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