

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NOS.2429 & 2430 OF 2016

AND

C.M.P.NOS.17102 & 17103 OF 2016

The Manager

Shriram General Insurance Co. Ltd.,
No.5-F, Sachin Plaza, Reddiyur Block No.1,
Nagar, Alagapuram,
Salem - 636 016

.. Appellant/2nd Respondent
in both CMAs

Vs.

1.Raju

.. Respondents 1 to 3/
Claimants in Both CMAs

2.Perumal

3.Minor Parameswari

(Minor petitioner represented by her next
friend guardian father Raju)

4.P.Pottiyammal

.. 4th Respondent/1st Respondent
in both CMAs

(4th Respondent set exparte
before Tribunal)

Common Prayer:-

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 02.06.2015 made in M.C.O.P.Nos.234 & 235 of 2012 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

In both CMAs

For Appellant : Mr.S.Dhakshnamoorthy

For R1 to R3 : Mr.L.Ramu

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed by the appellant/Insurance Company, challenging the award dated 02.06.2015 made in M.C.O.P.Nos.234 & 235 of 2012 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

2.Both the appeals arise out of the same accident and same award and hence they are disposed of by this common judgment.

3.The appellant in both the appeals is the second respondent in M.C.O.P.Nos.234 & 235 of 2012 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem. The respondents 1 to 3 in both the appeals have filed the above said claim petitions claiming a sum of Rs.15,00,000/- each as compensation for the death of Vasantha and Bakkiyaraj, who died in the accident that took place on 22.10.2011. The deceased Vasantha and Bakkiyaraj are daughter and son of the 1st respondent and sister and brother of the respondents 2 and 3.

4.According to the respondents 1 to 3, on the date of accident i.e., on 22.10.2011 at 2.30 p.m., while the deceased Bakkiyaraj was riding his motor cycle along with the deceased Vasantha, pillion rider, a tractor-trailer belonging to the 4th respondent, which was driven by its driver in a rash and negligent manner, dashed against the motorcycle and caused the accident. The deceased Bakkiyaraj died on the spot and the deceased Vasantha succumbed to her injuries on 11.11.2011. Therefore, the respondents 1 to 3 have filed claim petitions claiming compensation.

5.The 4th respondent, owner of the tractor-trailer, remained exparte before the Tribunal.

6.The appellant/Insurance Company filed counter statement in both the claim petitions denying the averments made by the respondents 1 to 3 in the claim petitions and contended that deceased Bakkiyaraj did not possess valid driving license at the time of accident. He denied that the tractor-trailer belonging to the 4th respondent was insured with the appellant. The driver of the tractor-trailer did not possess valid driving license at the time of accident. The respondents 1 to 3 have not impleaded the owner and insurer of the motorcycle driven by the deceased and the claim petitions are bad for non-joinder of necessary parties. Therefore, the appellant is not liable to pay any compensation to the respondents 1 to 3.

7.Before the Tribunal, 1st respondent, father of the deceased, examined himself as P.W.1, one Madesh, eye-witness,

was examined as P.W.2 and marked eight documents as Exs.P1 to P8. On the side of the appellant, one Sundaramoorthy, Motor Vehicle Inspector and Manikandan were examined as R.W.1 and R.W.2 and marked two documents as Exs.R1 and R2.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the tractor-trailer belonging to the 4th respondent and directed the appellant/Insurance Company to pay a sum of Rs.6,48,200/- each as compensation to the respondents 1 to 3 in both the appeals.

9.Against the said award dated 02.06.2015 made in M.C.O.P.Nos.243 & 235 of 2012, the appellant/Insurance Company has come out with the present appeals.

10.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal has failed to see that the vehicle bearing Registration No.TN 57 A 8931 was insured with the appellant and the Insurance is provided only for the vehicle bearing Engine No. and Chassis No as FD 3520, which is unique for each vehicle. The Tribunal failed to appreciate the evidence of RW1, the Motor Vehicle Inspector from R.T.O., who deposed that the Engine No. and Chassis No. of the vehicle involved in the accident was DL 5816 and not FD 3520. From the oral and documentary evidence, it is proved that the registration number of the vehicle involved in the accident is not known. The Tribunal ought to have exonerated the appellant from its liability and prayed for allowing these appeals.

11.Mr.L.Ramu, learned counsel appearing for the respondents 1 to 3 contended that the vehicle involved in the accident was insured with the appellant. The Tribunal considering the policy and RC book held that the vehicle involved in the accident was insured with the appellant and it is effective and valid, and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant/Insurance Company as well as the respondents 1 to 3/claimants and perused the materials available on record.

13.It is the contention of the appellant that the vehicle involved in the accident was not insured with the appellant at the time of accident. The Engine No. and Chassis No. are different from the vehicle insured with the appellant. From the evidence of RW1, who is Motor Vehicle Inspector attached to R.T.O, it is seen that there is difference in Engine number and Chassis No. in the registration certificate. The appellant has filed report of the Motor Vehicle Inspector and evidence of RW1 in the additional typed set of papers now filed in the appeals.

According to the appellant, report of the Motor Vehicle Inspector was marked as Ex.X1, in the Award by mistake, it was not mentioned. The Tribunal has not considered the evidence of RW1, Ex.X1 / Motor Vehicle Inspector report and has not given finding for not accepting the evidence of RW1 and not considering Ex.X1. In view of the failure on the part of the Tribunal in not considering the evidence of RW1 and Ex.X1, the Award of the Tribunal is liable to be set aside and is hereby set aside. Accordingly, M.C.O.P.Nos.234 & 235 of 2012 are remanded back to the Tribunal for fresh consideration on merits. It is open to the parties to let in further evidence, if they so desire.

14.In the result, these Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Motor Accident Claims Tribunal
Special District Judge,
Salem.
2. The Section Officer
V.R.Section, High Court, Chennai.

+2cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.104763 & 104764

C.M.A.Nos.2429 & 2430 of 2016

and

C.M.P.Nos.17102 & 17103 of 2016

NRL(CO)
CS/19/10/2020

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