IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.Nos.3132 to 3137 of 2019
and
C.M.P.Nos.17663, 17664,17666,17679,17682 and 17684 of 2019

N.Parthiban ..Appellant in all CMAs/ 1st respondent before the tribunal

Vs.

1.Nagaveni ..1st respondent in CMA.No.3132 of 2019/Claimant before the tribunal

2.V.Anand ..1st respondent in CMA.No.3133 of 2019/Claimant before the tribunal

3.Gowramma ..1st respondent in CMA.No.3134 of 2019/Claimant before the tribunal

4.Ramachandrappa ..1st respondent in CMA.No.3135 of 2019/Claimant before the tribunal

5.Muthamma ..1st respondent in CMA.No.3136 of 2019/Claimant before the tribunal

6.Malleshappa ..1st respondent in CMA.No.3137 of 2019/Claimant before the tribunal

7.The Branch Manager,
The Oriental Insurance Company Limited,
Dharmapuri. .. 2nd Respondent in all CMAs / 2nd respondent in all MCOPs before the tribunal

Prayer: These Civil Miscellaneous Appeal are filed under Section 173 of Motor Vehicles Act, 1988 against the common award and decree dated 28.04.2016 made in M.C.O.P.Nos.143/2015, 147/2014,128/2015, 135/2015, 145 /2014 and 96/2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur.

For Appellants in all CMAs : M/s.Sarvana Sowmiyan.P
For R2 in all CMAs : Mr.J.Chandran

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

These Civil Miscellaneous Appeals are filed by the appellant/owner of the vehicle challenging the award dated 28.04.2016 made in common award and decree dated 28.04.2016 made in M.C.O.P.Nos.143/2015, 147/2014,128/2015, 135/2015, 145 /2014 and 96/2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur.

2.Since all the appeals are arising out of the same accident and common award, hence they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petitions for the sake of convenience.

3.The appellant/owner of the vehicle is the 1st respondent in M.C.O.P.Nos. 143/2015, 147/2014,128/2015, 135/2015, 145 /2014 and 96/2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Hosur. The 1st respondents/claimants before the tribunal filed the said claim petitions, claiming various amounts as compensation for the injuries sustained by them in the accident that took place on 16.06.2014.

4.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 bus belonging to the 1st respondent and directed the 2nd respondent/Insurance Company as insurer of the said bus is liable to pay the various sum as compensation to the claimant(s) and recover the same from the 1st respondent/owner of the vehicle.

5. Against the said common award and decree dated 28.04.2016 made in M.C.O.P.Nos.143/2015, 147/2014,128/2015, 135/2015, 145 / 2014 and 96/2015, the appellant/owner of the vehicle has come out with the present appeals.

6. Heard both sides and perused the documents available on record.

7.The learned counsel appearing for the appellant/owner of the vehicle contended that the Tribunal erred in passing ex-parte order against the appellant and fixing liability on him. The other grievance raised by the appellant is that the driver of the vehicle was not added as a party and liable to be dismissed for non joinder of necessary party and these aspects were not considered by the Tribunal. Further contended that the Tribunal erred in fixing the liability upon the appellant on the ground of breach of conditions of policy without marking the driving license. The Tribunal failed to note that as per the evidence of RW-1 the driver possessed LMV license and erred in fixing the liability upon the owner which is illegal. Further contended that on 04.12.2014 notice sent to appellant was returned as no such addressee. On 19.01.2015 paper publication in any one English daily in Bangalore edition was ordered and on the basis of the paper publication appellant was called and set ex-parte on 19.08.2015 and these aspects were not considered by the Tribunal. Hence, on the whole the sum awarded by the Tribunal is highly excessive and a arbitrary one and prayed for setting aside the award of the Tribunal.

8. It is further argued by the appellant that the tribunal has not properly followed the procedure laid down under Order 5 Rule 20 and he relied upon the judgment of the Apex Court reported in 2018(1) CTC 662 in the case of Neerja Realtors Pvt Ltd Vs. Janglu (dead) thr.L.R. The relevant portion is extracted below;

> "13. On the other hand, learned counsel for the respondent urged that the findings of the High Court in the first appeal are borne out from the record and are in accordance with law. Hence no interference is warranted in the present proceedings.
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> 14. The record before the Court would indicate that the Trial Court by its order dated 9 February 2011 directed the issuance of summons to the original defendant, returnable on 15 March 2011. In pursuance of the order, summons were issued on 4 March 2011. The report of the bailiff dated 11 April 2011 indicates that the summons were returned unserved and the bailiff was informed that the original defendant had left the premises nearly two years earlier and resided elsewhere.
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> 15. Order V Rules 17 provides as follows:
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>> "17. Procedure when defendant refuses to accept service, or cannot be found.- Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall

> then return the original to the court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and 'whose presence the copy was affixed."

9. In the said case relied by the appellant, the trial Court by its order dated 09.02.2011 directed to issue summons to the original defendant returnable on 05.03.2011. In pursuance of the order, summons were issued on 04.03.2011. The report of the bailiff dated 11.04.2011 indicates that the summons were returned unserved and the Bailff was informed that the original defendant had left the premises nearly two years earlier and he is residing elsewhere and hence followed the procedure laid down in Order 5 Rule 17.

10. Hence by relying the said judgment, the appellant contended that after taking proper efforts to take effective service and if it is not possible after reasonable endeavour only then the substituted service has to be ordered, hence there is clear breach of procedure has been made by the trial Court and the procedure in the said provision was not properly followed.

11. In the case on hand, it is seen from the records that the tribunal issued notice to the 1st respondents/appellant on 27.10.2014 and the same was returned unserved as 'No such addressee' on 04.12.2019, the tribunal ordered Publication in any one English daily in Bangalore Edition on 09.01.2015, since the 1st respondent/appellant was absent, exparte order was passed on 19.08.2015. Further it is also seen that the said case was also pending till 2016 for enquiry and the judgment and finally the decree was passed on 28.04.2016. As against the judgment and decree, the Civil Miscellaneous Appeals were preferred by the appellant only in the year 2019.

12. It is argued by the appellant that he has strong grounds in the said claim and because of not taking effective service by the Insurance Company, this appellant has lost his opportunity to contest the claim application. The further arguments advanced by the appellant is that the claimant have not proved that they travelled in the said bus at the time of the accident and the driver of the vehicle was not added as party in the claim petition, on these grounds also the claim petition is not maintainable.

13. On the other hand, the learned counsel for the 2nd respondent/Insurance Company contended that the summons were

taken to the appellant herein to the address furnished by him in the policy ,Ex.R5. The appellant has furnished his address in the Policy as No.56, II Main Road 19th Cross, 5th Phase, Gopala Reddy Layout, Bangalore, but in the appeal he has furnished his address at No. 403, Biden Swarganga Apartments, Teacher's Colony, Jakkasandra, 1st Main, 4th Cross, 1st Block, Koramangala, HSR Layout 5th Sector, Bengaluru, Karnataka-560034.

14. It is further argued that only as per the address given in the policy by the appellant herein notice was ordered by the tribunal and the same was returned as 'No such addressee' and further substituted service was also effected as ordered by the tribunal.

15. The case relied by the appellant was Civil Suit in which notice was ordered to the defendants and in the present case also since the service could not be effected by the respondent and paper publication was ordered. Even in that case the information given by the neighbours of the defendants was that the defendant left the place 2 years ago. Therefore, the substituted service ordered by the trial Court in that case cannot be relied by the appellant in the present claim petition. In the appeal as well as in the claim petition, the service was taken to the appellant to the address furnished by them in the policy. Hence, there is no need for the Court to verify the address, which was given by the appellant himself. Hence the order of substitute service by the tribunal is very much reasonable .

16. Further this Court observes that if the appellant denies of address entered in his policy which was given by him will amounts to denial of insurance itself. The address given by the appellant in these appeals, which he claims as his original address also not supported by any relevant documents.

17. The appellant has also contended that the 2nd respondent/Insurance Company has not taken effective steps by way of filing execution petition and affixed in the bus, hence he prayed for stay of all the proceedings before the trial Court. When this Court raised a question that how he came to know about the execution petition and on what basis he filed these CMA, the appellant has not come forward with any reliable and acceptable reason. For change of address in the policy and in the appeal, he was not able to produce any documents. But he has stated that the Court notice was served upon his employee on 08.03.2018 in the Execution Petition and only after verification with his advocate, he came to understand that an exparte award was passed as against him and the 2nd respondent/insurance company has filed the execution petitions as against him for recovery of the award amount and immediately he took steps to

file the present appeal. Further he has also stated that he has fair chance to succeed in the present appeal.

18. On a perusal of records, it is observed that the award was passed on 28.04.2016 but he preferred this appeal with the delay of 854 days by assigning the same reasons as stated above. It is seen that except the above reasons the appellant has not given any valid reason for the huge delay both in the appeal as well as stay petition.

19. It is seen from the records that the driver of the said vehicle has appeared before the tribunal and he was identified as one Rajasekar and from his driving license, it is ascertained that he is permitted to drive only LMV(Light weight Motor Vehicles).Ex.R1 -Motor Vehicle Inspection report also filed before the tribunal. RW2, who was examined as witness on the side of the insurance company also stated that at the time of the accident the driver of the said bus did not possess valid driving license to drive the said bus and Hence it is clear that there is violation of policy condition and RW1 also deposed that the accident had occurred only due to rash and negligent on the part of the driver. Hence the tribunal by considering the Ex.P1-FIR on which a criminal case was registered against the driver of the said bus and also evidence of RW1 and RW2 has concluded that the driver of the said bus is responsible for the accident. Since, there is clear breach of violation of policy condition, the tribunal directed the 2nd respondent/Insurance company to pay the compensation at the first instance and recover the same from the first respondent/appellant herein. The Insurance company has also deposited the compensation as directed by the tribunal and filed the execution petition to recover the same from the 1st respondent/appellant herein.

20. Since the appellant who claims himself as owner of the said bus which caused the accident by the negligence of his driver, admits the accident, but his statement that he came to know the occurance of the accident only in the year 2018 that too through his employee is not reasonable and cannot be accepted. Further the negligence was also very much proved though evidence of RW1 & RW2. If the grievances of the appellant are genuine, he could very well come forward with all relevant particulars, but he failed to produced any proof to substantiate his arguments. Further, the appellant is not ready to furnish the driving license of the driver who drove the vehicle at the time of the accident and there was no proper explanation for the change in his address in the Policy and in the Appeal. The appellant has also not furnished any proof for his contention that the claims were made by the claimant by colluding with the Insurance Company.

21. In view of the above, the argument of the appellant before this Court that he has not given any opportunity by the tribunal to contest his case, since he has no knowledge about the proceedings in the claim petition as well as execution petition cannot be accepted. Further in view of the clear proof that the accident occurred due to rash and negligence driving on the part of the driver of the bus and the breach of violation of policy condition and also the evidence of claimants that they were travelling the in the said bus at the time of the accident, the finding of the tribunal in awarding compensation to the claimants and fixing negligence on the part of the driver of the bus and further directing the insurance company to pay the compensation and recover the same from the owner of the vehicle is very much proper and reasonable. This Court finds no error in the said findings of the tribunal.

22. In view above observations and discussions, these Civil Miscellaneous Appeals are dismissed. The tribunal is directed to execute the petitions within a period of one month from the date of receipt of a copy of this order and report the same. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1) The Subordinate Judge,
Motor Accidents Claims Tribunal
Hosur.

2) The Section Officer,
Judicial Section, High Court, Madras.

+1 cc to Mr.J.Chandran, Advocate, S.R.No.74129

CMA.Nos.3132 to 3137 of 2019
and
C.M.P.Nos.17663, 17664,17666,
17679,17682 and 17684 of 2019

NRJK(CO)
SSM(30/10/2019)