IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3013 of 2019
And
C.M.P.No.16277 of 2019

Dharmaraja ..Appellant/1st Respondent

Vs.

1.Jeyanthi

2.Premanand

3.Yeshvandini ..R1 to R3/Claimants

4.The Manager,
ICICI Lombard General Insurance Company Ltd.,
Puducherry.
..4th Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.09.2017 made in M.C.O.P.No.176 of 2012 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Puducherry.

For Appellant : Mr.A.Muthukumar

For R4 : Mr.K.Poomalai



J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/owner of the vehicle, challenging the award dated 15.09.2017 made in M.C.O.P.No.176 of 2012 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Puducherry.

2.The appellant/owner of the vehicle is 1st respondent in M.C.O.P.No.176 of 2012 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Puducherry. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one Sivasubramanian, who died in the accident that took place on 06.10.2011. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Victa Car belonging to the appellant and directed the appellant/Insurance Company to pay a sum of Rs.6,28,000/- as compensation to the respondents 1 to 3, at the first instance and recover the same from the appellant/owner of the vehicle. Against the said award dated 15.09.2017 made in M.C.O.P.No.176 of 2012, the appellant/owner of the vehicle has come out with the present appeal challenging the liability fastened on him.

3.The learned counsel appearing for the appellant contended that the vehicle involved in the accident is an own use car and therefore no permit is required and therefore the award of the Tribunal fixing liability on this appellant is liable to be set aside. The Tribunal failed to consider that Ex.P3/registration certificate shows that the vehicle is not a transport vehicle which alone requires permit to ply at Puducherry. Further contended that Ex.P4, clearly shows that the vehicle in only an own use vehicle with these aspects the said documents was placed before the Tribunal. But the Tribunal has not considered the same and fixed liability on this appellant which is highly erroneous and hence prayed for setting aside the award of the Tribunal.

4.The learned counsel appearing for the 4th respondent/Insurance Company contended that the vehicle bearing Reg.No.PY-01-Y-9779 was not involved in the accident. There is no negligence on the part of the 1st respondent's driver and it is the deceased who rode the motorcycle in a rash and negligent manner and caused the accident. Hence the owner and insurer of the deceased vehicle's have to be impleaded as necessary parties. The petitioners have to prove that the alleged vehicle was having registration certificate, insurance policy, permit etc. and the driver of the vehicle had valid driving license at the time of accident. Further contended that there is no valid permit for the 1st respondent's vehicle which was used as transport vehicle, the 1st respondent violated the policy condition and this respondent is not responsible for the accident. The claim made by the petitioners is excessive and the rate of interest claimed is also high and prayed for dismissal of the appeal.

5.Heard Mr.A.Muthukumar, learned counsel appearing for the appellant as well as Mr.K.Poomalai, learned counsel appearing for the 4th respondent/Insurance Company and perused all the materials on record.

6.From the materials on record, it is seen that the accident occurred on 06.10.2011 when the deceased was proceeding in the motorcycle and at that time the 1st respondent's Tata Victa Sumo Car bearing Reg.No.TN-49-S-5136 came in the opposite direction in a rash and negligent manner and dashed against the motorcycle of the deceased and also two motorcycles bearing Reg.No.PY-01-BA-4119 and PY-01-AA-3181 and dashed over the car. Due to the impact the deceased sustained injuries and died. Hence FIR was registered and the claimants also claimed compensation for the said accident. The respondent also contended that the Ex.P3/registration certificate was marked under the name of the 1st respondent, Ex.P4/Insurance certificate of the 1st respondent's vehicle and the policy was also valid from the date of accident. Further Ex.P5/copy of the driving license of the 1st respondent's vehicle also filed before the Tribunal. But RW1 examined on the side of respondent, who deposed before the Tribunal that there was no permit for the 1st respondent's vehicle to ply at Puducherry and thereby the 1st respondent had violated the policy condition. The Tribunal considering the fact that since 1st respondent was registered with State of Tamil Nadu and the accident took place at Puducherry and there is no permit for the 1st respondent's vehicle to ply the vehicle has observed that it is a transport vehicle. Further, in Ex.P7/accident inspection report, there is no mention about the permit of the vehicle.

7.On perusal of records, it is observed that Ex.P3 was already placed before the Tribunal and the respondent also verified the same, the said vehicle is only a private vehicle and not a transport vehicle. Ex.P3 also clearly reveals the fact that the vehicle is meant for own use and the details of description reveal all these facts. Further RC was also issued and it covers the period from 12.01.2006 to 12.01.2021. Hence by observing all these facts and the respondent also verified the same that the vehicle involved in the accident is only private vehicle, which does not require any permit, the observation made by the Tribunal directing the Insurance Company to pay the sum and recover the same from the appellant/owner of the vehicle has to be set aside. Further it is represented that the respondent/Insurance Company also deposited entire award amount ordered by the Tribunal. In view of the above discussions, this Court modifies the award of the Tribunal to the effect that the appellant/owner of the vehicle is not liable to pay compensation to the claimants and the Insurance Company/4th respondent herein alone shall pay the compensation awarded by the Tribunal and this Court set aside the pay and recovery ordered by the Tribunal.

8.In the result, this Civil Miscellaneous Appeal is allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

9.Since it is represented that the Insurance Company had already deposited the entire award amount, the claimants/respondents 1 to 3 herein are permitted to withdraw the same, on filing proper application before the Tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Puducherry.

+1cc to Mr.K.Poomalai, Advocate, S.R.No.76605

C.M.A.No.3013 of 2019
And
C.M.P.No.16277 of 2019



SPD(CO)
RN(08/06/2020)