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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2568 of 2018

New India Assurance Company Ltd.,
No.45, Moore Street,
Chennai.

... Appellant/2nd Respondent

Vs.

1.S.Valli
2.S.Subbiah
3.D.Kuppusamy

... Respondents 1 & 2/Claimants
... 3rd Respondent/
1st Respondent

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.1321 of 2015, dated 10.11.2017 on the file of the learned Chief Judge (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.J.Chandran

For Respondents: Ms.Ramya V.Rao
Mr.A.V.Vishwanatha Rao
for R1 & R2
No appearance - R3

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

This appeal is preferred by the appellant/Insurance Company on the question of negligence alone, though in the grounds of appeal, the issue governing quantum has also been raised.

2. It is the case of the claimants that the deceased was travelling on 30.07.2014 on the road, when a water tanker lorry bearing Registration No.TN-01-T-1609 dashed





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respect to the insurance is not backed by any evidence. We have perused the entire evidence marked before the Tribunal. Neither the cheque stated to have been given by the owner nor the policy cover and the proposal form have been produced and marked. A copy produced by the learned counsel for the appellant shows that it was done on the next day of the accident.

7. We do not want to make reliance upon the said documents produced since the same have not been marked before us, though proceedings are only summary even before this Court. We are also conscious of the fact that a sum of Rs.10,00,000/- has already been received by respondents/claimants 1 and 2. However, we find that the Tribunal after having given a finding with respect to the existence of the policy cover ought to have called for the evidence in support of the same. An issue has been framed specifically but answered on a mere surmise and without any material particulars. The question as to whether there exists a policy on the relevant day - the date of accident, goes to the root of the case. Thus, the contention raised by the learned counsel for the claimants/respondents 1 and 2, in this regard, cannot be countenanced.

8. We do not want to play the role of the Tribunal, in this regard. Suffice it to set aside the award of the Tribunal by remitting it back for reconsideration. The appellant/Insurance Company is permitted to file appropriate documents before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment. Thereafter, the Tribunal, will have to take appropriate decision on the question of existence of the policy. It is not as if in all circumstances, the Insurance Company is bound to be made liable. We have not expressed anything on the merits of the case and we only remit the matter for fresh consideration. Such a remittal order is passed by taking note of the fact that claimants/respondents 1 and 2 have already received a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only). Therefore, we do not propose to call for a finding in this regard instead of remitting the matter to the Tribunal.

9. The decision relied on by the learned counsel for the claimants/respondents 1 and 2, in our considered view, does not apply to the case on hand. In the said case, there was a positive action on the part of the erstwhile employee of the Insurance Company. Now, we are concerned with the existence of the policy on the date of the accident.



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10. In such view of the matter, the award passed by the Tribunal stands set aside and the Civil Miscellaneous Appeal is allowed. The matter is remitted to the Tribunal for fresh consideration in the light of the discussion made above. The Tribunal, shall pass appropriate orders within a period of four months from the date of receipt of a copy of this judgment. No costs. Consequently, connected C.M.P.No.19504 of 2018 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

The Chief Judge
Motor Accident Claims Tribunal,
Chennai.

+1cc to Mr.J.Chandran, Advocate, S.R.No.104184

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.103530

C.M.A.No.2568 of 2018

VD(CO)

CB(27/08/2020)