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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2329 of 2018 and
C.M.P.No.17813 of 2018

M/s.United India Insurance Company Ltd.,
Silling Building,
No.134, Greams Road,
Chennai - 600 006.

.. Appellant

Vs.

1.V.Prem Kumari
2.Ishowari Prasad Padhya
3.Krishna Prasad Paudel

4.M/s.P.S.K.Engineering Construction and Co.,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road,
Namakkal - 637 001.

.. Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.02.2018 made in M.C.O.P.No.362 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellant : Mr.K.Swaminathan

For RR1 to 3 : Ms.S.Ramya for
Mr.J.Mahalingam

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 23.02.2018 made in M.C.O.P.No.362 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.



2.The appellant is the second respondent in M.C.O.P.No.362 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. The respondents 1 to 3 filed the above said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Pushparaj Paudel, who died in the accident that took place on 28.04.2015.

3.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 belonging to the fourth respondent and directed the appellant-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.16,17,600/- as compensation to the respondents 1 to 3.

4.Against the said award dated 23.02.2018 made in M.C.O.P.No.362 of 2016, the appellant-Insurance Company has come out with the present appeal.

5.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to see that the trailer attached to the tractor was not registered and was not insured with the appellant. The fourth respondent, owner of the vehicle violated the policy condition by using unregistered and uninsured tractor. The tractor has to be used only for agricultural purpose and not for commercial purpose. The fourth respondent used the tractor for engineering purpose. For violation of policy condition, the Tribunal ought to have directed only the fourth respondent, owner of the tractor to pay the compensation. At the time of accident, the driver of the tractor did not possess driving license to drive the vehicle. The Tribunal ought to have summoned the police or official from R.T.O. to prove that driver of the tractor had driving license at the time of accident. In any event, the Tribunal ought to have ordered pay and recovery without initiating separate legal proceedings.

6.Per contra, the learned counsel appearing for the respondents 1 to 3 contended that the accident has occurred only due to rash and negligent driving by the driver of the tractor. The issue whether the trailer was registered or insured was not an issue for payment of compensation, as the accident occurred when the driver of the tractor drove the same in a rash and negligent manner and dashed against the deceased. The appellant has not examined any witness to prove that driver of the tractor did not possess any driving license and prayed for dismissal of the appeal.



7.I have heard the learned counsel appearing for the appellant as well as the respondents 1 to 3 and perused the entire materials on record.

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8.From the materials available on record, it is seen that the respondents 1 to 3 contended that when the deceased was closing the gate of MIT, the driver of the tractor drove the same in a rash and negligent manner and dashed against the deceased and due to the injuries, he died. To substantiate their contention, the respondents 1 to 3 examined P.W.1 and P.W.3 and marked F.I.R. which was registered against the driver of the tractor. It is not the case of the respondents 1 to 3 that trailer was attached to the tractor and trailer dashed against the deceased. The appellant has not let in any evidence to show that accident did not occur due to rash and negligent driving by the driver of the tractor or the driver did not possess driving license at the time of accident. The contention of the learned counsel for the appellant that the Tribunal ought to have summoned the police and official from R.T.O. to prove that driver had valid driving license to drive the tractor is without merits. When the appellant has taken a stand that driver of the tractor did not possess driving license at the time of accident, it is for them to prove the same by acceptable evidence. They ought to have summoned the official from R.T.O. to prove that driver of the tractor did not possess license at the time of accident. The Tribunal considering the pleadings, oral and documentary evidence let in by the respondents 1 to 3 and failure on the part of the appellant to let in any contra evidence, held that accident has occurred only due to rash and negligent driving by driver of the tractor belonging to the fourth respondent and appellant as insurer of the vehicle is liable to pay the compensation. There is no error in the above finding of the Tribunal warranting interference by this Court.

9.In the result, this Civil Miscellaneous Appeal is dismissed and the amounts awarded by the Tribunal as compensation to the respondents 1 and 3/claimants, 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 to the credit of M.C.O.P.No.362 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already



withdrawn, by filing necessary applications before the Tribunal.
No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.J.Mahalingam, Advocate sr.31837
+1cc to Mr.K.Swaminathan, Advocate sr.31453

C.M.A.No.2329 of 2018 and
C.M.P.No.17813 of 2018

ssv(co)
nr 11/10/2019