



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2019

CORAM:

THE HONOURABLE **MR. JUSTICE KRISHNAN RAMASAMY**

C.M.A. (MD) Nos. 904 & 905 of 2013

and

M.P. (MD) Nos. 1 & 1 of 2013

C.M.A. (MD) No. 904 of 2013

National Insurance Company Limited through its
Branch Manager, Tuticorin.

: Appellant /R2

Vs.

1. Paulraj : 1st Respondent/Petitioner

2. Periyasamy : 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order and decree dated 25.02.2005 passed in M.A.C.O.P.No.215 of 2003 on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Tirunelveli.

C.M.A. (MD) No. 905 of 2013

National Insurance Company Limited through its
Branch Manager, Tuticorin.

: Appellant /R2

Vs.

1. Vasanthi Lilly Bai

2. Minor Sujin

3. Minor Snopa
(Minor respondents 2 and 3 are
represented through their mother
and guardian 1st respondent herein)

4. Mariyammal : Respondent 1 to 4/
Petitioner

5. Periyasamy : 5th Respondent/
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order and decree dated 25.02.2005 passed in M.A.C.O.P.No.451 of 2003 on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Tirunelveli.



For Appellant : Mr.J.S.Murali
(in both C.M.As.)

For Respondents : No Appearance
(in C.M.A. (MD) No.904 of 2013)

For R1 to R4 : Mr.K.Sudalaiyandi
(in C.M.A. (MD) No.905 of 2013)

For R5 : No Appearance
(in C.M.A. (MD) No.905 of 2013)

COMMON JUDGMENT

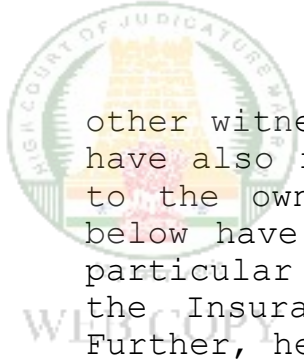
These Civil Miscellaneous Appeals have been filed to set aside the order and decree dated 25.02.2005 passed in M.A.C.O.P.Nos.215 and 451 of 2003 on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Tirunelveli.

2.In both the appeals, the appellant/Insurance Company challenged the fixation of liability against the Insurance Company.

3.According to the appellant/Insurance Company, the offending lorry was not insured with the appellant/Insurance Company and the claimants failed to file the insurance policy covering date and time of the accident. That apart, there is no policy coverage covering the date and time of the accident, issued by the appellant/Insurance Company in favour of the offending lorry. Therefore, the learned counsel for the appellant/Insurance Company contended that without considering the above aspect, the tribunal fixed the liabilities against the owner of the offending vehicle along with the Insurance Company.

4.This Court, in order to find out as to whether any policy was issued for the relevant point of time when the accident was occurred. The appellant herein produced the policy for the period from 27.12.2002 to 26.12.2003. By producing the said policy, he contended that there is no policy issued by the appellant for the period prior to 27.12.2002 and the accident had occurred on 24.12.2002. Therefore, he contended that the Insurance Company is not responsible for payment of compensation and requested that liabilities should be fixed only against the owner of the vehicle and the order of the Tribunal is liable to be set aside.

5.On the other hand, the learned counsel for the respondents 1 to 4/Claimants in C.M.A.(MD)No.905 of 2013 would contend that in order to prove the accident, they have examined P.W.1 and further the Insurance Company also cross examined P.W.1 and the appellant/Insurance Company has not examined any witnesses, in order to prove that the owner of the offending vehicle has not obtain any insurance policy from the Insurance Company. Further he would contend that it is for the appellant/Insurance Company to examine



other witnesses about the non-issuance of the policy. Further, they have also failed to examine as to whether any new policy was issued to the owner of the vehicle. In these circumstances, the Court below have come to the conclusion that there was a policy for the particular point of time and fixed the liabilities as against both the Insurance Company and the owner of the offending vehicle. Further, he would contend that the award was passed in the year 2005 and these appeals were preferred only in the year 2013 and the Insurance Company have not taken any steps to file these appeals, immediately.

6.The learned counsel for respondents 1 to 4/Claimants would contend that the fifth respondent/owner had not appeared before the Court below and set ex-parte. Before this Court, initially he appeared through counsel and subsequently, the vakalath was withdrawn and thereafter, none appeared on behalf of the fifth respondent. Therefore, it is for the owner to establish the availability of the policy.

7.This Court has considered the submissions made by the learned counsel on either side and materials available on record.

8.No doubt that the Insurance Company has taken a stand about the non-availability of the policy for the period when the accident occurred. It is for the Insurance Company to prove that they have not issued any policy, by let in evidence. But, the Insurance Company has not taken any steps to examine any of the parties including the driver of the vehicle. Further, the Insurance Company filed these appeals only in the year 2013, after a lapse of eight years. Apart from that, the Insurance Company, in order to disprove the point of issuance of policy, have not examined any of the witnesses.

9.In these circumstances, by considering the submissions made by the learned counsel on either side, this Court do not find any ground to interfere with the order passed in M.A.C.O.P.Nos.215 and 451 of 2003 on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Tirunelveli. However, this Court directs the appellant/Insurance Company to pay the entire compensation as awarded by the Tribunal and recover the same from the owner of the offending vehicle by following the procedure laid down in a decision of the Hon'ble Supreme Court in ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others***, reported in ***I (2004) ACC 524 (SC)***.

10.In the result, these Civil Miscellaneous Appeals are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //



The Motor Accidents Claims Tribunal,
1st Additional District Court, Tirunelveli.

Copy to

The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+2 CC to Mr.J.S.MURALI, Advocate (SR-92394,92395[F] dated
17/10/2019)

+1cc to Mr.SUDALAYANDI, Advocate Sr.No.92249

C.M.A. (MD) Nos.904 & 905 of 2013
16.10.2019

VB(30.12.2019) 4P 7C