

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2390 of 2005

The Branch Manager
The New India Assurance Co Ltd.,
Thirupathur,
Rep. the Deputy Manager, Third Party cell,
The New India Assurance Co Ltd.,
45, Moore Street, Chennai - 1 ...Appellant/R2 in Trial Court

Vs.

1.Arun Kumar (Minor)
rep. by his next friend
and father Saravanan

2. M.Kaliyappa ...Respondents/Petitioner and R1 in Trial Court

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.1386 of 2003 dated 08.11.2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Krishnagiri.

For Appellant : Mr.G.Udhayasankar

For Respondents : Mr.V.Kumaravelan for R1
R2 - Name printed. No appearance

J U D G M E N T

This appeal is filed by the appellant / insurance company against the judgment and decree made in MCOP No.1386 of 2003 dated 08.11.2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Krishnagiri.

2. The case of the claimant / 1st respondent is that on 22.06.2002 at about 16.00hrs, when the claimant was walking on the extreme left side mud portion of the road at Erumathur near SSS Medical store, at that time, one Ambassador car bearing Reg.No.TN59X0223 belonging to the second respondent insured with the appellant driven by its driver in a rash and reckless manner

without observing any rules of the road, without sounding horn with high speed in Dharmapuri to Thirupattur road, suddenly hit the claimant, thereby the claimant was thrown away and sustained grievous injuries. Thereafter, the claimant was taken to the Government Hospital and then to the Nathan Bone and Joint Hospital, Salem. Due to the accident the claimant could not able to do any normal work as before, at the time of accident, the claimant was studying 10th standard and he was lost his remembrance power and he cannot study his lessons.

3. The insurance company filed counter inter alia stating that the car was insured for the period from 28.01.2002 to 27.01.2003. The car was used as Taxi and permit was granted till 13.06.2002 and the said accident took place on 22.06.2002 beyond the expiry of permit. The permit ought to have been renewed from the concerned RTO. The said accident cannot be covered under the conditions stipulated under the policy.

4. In order to prove the case of the claimant, the claimant examined PW1 to PW3 and marked Ex.P1 to Ex.P6. On the side of the appellant, RW1 was examined and marked Ex.R1. Though name has been printed in the cause list, there is no representation for the 2nd respondent

5. Heard both sides and perused the materials available on record.

6. The Court below found that the negligence is on the part of the car driver, who dashed against the minor and due to the accident, the claimant-minor sustained injuries and the 2nd respondent / owner of the car remained exparte. The Court below also observed that the appellant being the insurer of the car is liable to pay the compensation. Further, R.W.1./ authorised person of the Insurance company, in his chief examination, has stated that the said accident had occurred on 22.06.2002, at that time, the car was not fit for driving in the road, since the same is without valid permit and the permit for the car was expired on 13.06.2002. Since there is no proper fitness certificate has been produced, the same falls under the violation of the policy conditions. The Court below also stated that since the claimant / minor is the 3rd party, necessarily, he should be paid compensation and since the 2nd respondent is the owner of the car, he should be punished appropriately and thereby directed the appellant to deposit the said award amount of Rs.3,10,000/- along with 9% interest on the file of Sub Court, Krishnagiri in MCOP No.1386 of 2003.

7. During the course of argument, the learned counsel for the appellant contended that in Paragraph No.10 of the Judgment, the Tribunal was of the view to pass Judgment for pay and recovery, whereas, in the result portion, liability has been fixed on the appellant / Insurance Company, hence, the learned counsel prays to pass Judgment on the line of pay and recovery and to set aside the Judgment of the Tribunal made in M.C.O.P.No.1386 of 2003 on the file of MACT, Sub Court, Krishnagiri dated 08.11.2004. The learned counsel also pleaded to reduce the rate of interest from 9% to 7.5% .

8. This Court is not in agreement with the contention of the learned counsel for the appellant because of the reason, in the same paragraph, the court below, by taking shelter of cross examination of R.W.1, namely, Sundararaj, authorised person of the appellant / Insurance Company, had concluded that the Insurance Policy was in existence at the time of accident and that the said officer was not aware of the reason whether the permit obtained by the owner of the vehicle was renewed by paying penalty or not. Further, the court below has rightly fixed the negligence and awarded compensation to the claimant, which does not warrant any interference in the hands of this Court.

9. In view of the above, while confirming the order passed by the Court below in M.C.O.P.No.1386 of 2003 dated 08.11.2004 with regard to liability, this Court makes a slight modification to the said order by reducing the interest portion from 9% to 7.5%, since the same is on the higher side. The appellant/Insurance Company is directed to deposit the award amount along with accrued interest and costs, less the amount deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw his award amount, as per the direction of the court below, less the amount if any, already withdrawn. No costs. Accordingly, the present Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

tsh/ssd

To

1. The Subordinate Judge,
The Motor Accident Claims Tribunal,
Krishnagiri

Copy To

The Section Officer,
VR Section,
High Court, Madras-600 104.

+1cc to Mr.V.Kumaravelan, Adv. Sr.No.6087

+1cc to Mr.G.Udayasankar, Adv.Sr.No.5442

C.M.A.No.2390 of 2005

EV(CO)
GMY(09/04/2021)