

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1744 of 2008

1.Annamalai (Died)
2.Valliammai
3.Manikandan

... Appellants/ Claimants

(Appellants 2 & 3 brought on record as legal heirs of the deceased sole appellant viz., Annamalai vide Court order dated 16.10.2019 made in C.M.P.No.19024, 19034 and 19049/2018 in C.M.A. No.1744 of 2008)

Vs.

1.Duraiswamy

2.The New India Assurance Company Ltd.,
30, P.J.N. Street, II Floor,
Pondicherry.

... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.02.2006 made in M.C.O.P.No.292 of 2005 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Villupuram.

For Appellants : Mr.F.Terry Chella Raja for
Mr.C.Jagadish

For R1 : No appearance

For R2 : Mr.M.Krishnamoorthy

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 28.02.2006 made in M.C.O.P.No.292 of 2005 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Villupuram.

2. The 1st appellant Annamalai was claimant in M.C.O.P.No.292 of 2005 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Villupuram. He filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him, in the accident that took place on 12.08.2003.

3. 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 van belonging to the 1st respondent, insured with the 2nd respondent/Insurance Company and directed the 1st respondent/owner of the vehicle to pay a sum of Rs.2,07,600/- as compensation to said Annamalai, the 1st appellant and dismissed the claim petition as against the 2nd respondent/Insurance Company.

4.Challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company as well as not being satisfied with the quantum of compensation awarded by the Tribunal, the 1st appellant has come out with the present appeal. Pending appeal, the said Annamalai died and his legal heirs were impleaded as appellants.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in fixing the liability on the 1st respondent. The Tribunal failed to see that the 2nd respondent in the counter statement did not deny Insurance Policy issued to the offending vehicle. In the counter statement they did not state that they have not issued any policy to the offending vehicle. The Tribunal failed to consider Ex.A2/Motor Vehicles Inspector Report in which it was clearly stated that the offending vehicle was covered with Insurance during the period of accident. The 2nd respondent did not let in any contra evidence to the evidence of PW1. The Tribunal ought not to have dismissed the claim petition against the 2nd respondent/Insurance Company.

6.Though notice was served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

7.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the 1st appellant did not furnish any details with regard to Insurance Policy except stating the name of the 2nd respondent/Insurance Company in the

claim petition and the vehicle was insured with the 2nd respondent. The Tribunal has properly appreciated the evidence let in before it and rightly dismissed the claim petition as against the 2nd respondent. Pending claim petition, the injured/claimant died and his legal heirs were impleaded as appellants 2 & 3 and they are not entitled to any enhancement for the injuries sustained by the injured/claimant and prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused all the materials available on record.

9. It is the contention of the appellants that the offending vehicle belonging to the 1st respondent was insured with the 2nd respondent/Insurance Company at the time of accident and therefore, the 2nd respondent/Insurance Company is liable to pay compensation. The 2nd respondent in the counter statement has not denied the same and has not let in any evidence to show that no policy was issued by them to the offending vehicle, when the specific case of the 1st appellant that the offending vehicle was insured with the 2nd respondent. The Tribunal without considering the evidence of PW1, Ex.P2/Motor Vehicles Inspector Report and the averments in the counter statement erroneously held that the appellants failed to prove the existence of the Insurance Policy issued by the 2nd respondent for the offending vehicle at the time of accident. In addition to the above facts, the 2nd respondent/Insurance Company filed petition under Section 170 of the Motor Vehicles Act, to defend the case on behalf of the owner of the vehicle. For the above reason, the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company is set aside and the 2nd respondent as insurer of the vehicle is liable to pay compensation.

10. As far as quantum of compensation is concerned, the 1st appellant has filed claim petition for compensation for the injuries sustained by him in the accident. Pending appeal, the appellants 2 & 3 were impleaded as his legal heirs. The appellants 2 & 3 are not entitled to any enhancement of compensation since the claim petition is filed for compensation for the injuries sustained by the 1st appellant.

11. In the result, the Civil Miscellaneous Appeal is partly allowed and award of the Tribunal dismissing the claim petition

against the 2nd respondent alone is set aside and a sum of Rs.2,07,600/- awarded by the Tribunal as compensation along with interest and costs is confirmed. The 2nd respondent/Insurance Company is directed to deposit the award amount fixed by the Tribunal, 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. On such deposit, the appellants 2 & 3 are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Principal Subordinate Judge,
The Motor Accident Claims Tribunal
Villupuram.

Copy to

The Section Officer
V.R.Section
High Court, Chennai.

1 cc to Mr.M. Malar, Advocate, Sr. 22933
1 cc to Mr.M. Krishnamoorthy, Advocate, Sr. 22439

C.M.A.No.1744 of 2008

SSI (CO)
kk 6/1

WEB COPY