

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1995 of 2008

(Through Video Conferencing)

1. C.Saroja
2. C.Mohankumar
3. C.Gowrishankar ... Appellants/ Petitioner

Vs.

1. S.Sathya Saranvanan
2. S.Barath Narandran
3. S.Eswaran
4. The Tamil Nadu State
Transport Corporation Ltd.,
Coimbatore Division No.II,
Chennimalai Road,
Erode-2.
5. National Insurance Co. Ltd.,
Branch Office,
66-Perundurai Road,
Erode-11. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to fix the liability on the insurer/5th respondent in the Judgment and Decree in M.C.O.P.No.341 of 2005, dated 11.12.2007, on the file of the Motor Accidents Claims Tribunal, First Additional District Court, Erode.

For Appellants : Mr.R.Vinothraja
for Mr.N.Manokaran

For Respondents :
For R1 & R2 : Service awaited
For R3 : No appearance
For R4 : No appearance
For R5 : Mr.K.Padmanabhan

JUDGMENT

The claimants are the appellants in this appeal and are aggrieved by the impugned Judgment and Decree dated 11.12.2007 passed by the Motor Accidents Claims Tribunal, First Additional District Court, Erode in M.C.O.P.No.341 of 2005.

2. By the impugned Judgment and Decree, the Tribunal has allowed the claim petition, but at the same time the Tribunal has exonerated the fifth respondent Insurance Company on the ground that the first respondent/driver of the school bus did not possess a valid driving license. Therefore, the second respondent/owner of the vehicle is liable to pay compensation to the appellants/claimants.

3. The operative portion of the impugned order reads as under:-

" 17. Ex.R.3 which was marked through RW,4 is the driving licence issued to the 1st respondent which shows that the 1st respondent was authorised to drive a light motor vehicle and not transport vehicle. It is specifically mentioned in the driving licence that the 1st respondent was not supposed to drive transport vehicles."

Though elaborate submission was made by the fifth respondent Insurance Company stating that the decision rendered in the context of commercial vehicles cannot be applied to the buses belonging to the educational institutions has defined in Section 2(11) of the Motor Vehicles Act, 1988. I am of the view that the said point cannot be entertained in the light of the decision of the Hon'ble Supreme Court in the case of The Oriental Insurance Company Limited Vs Nanjappa and others, 2014 (13) SCC 224, held as follows:-

"7. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.

8. Before release of the amount to the claimants, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall

be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured."

4. Thus, the present Civil Miscellaneous Appeal is allowed. Therefore, the fifth respondent Insurance Company is directed to deposit the amount and recover the same from the second respondent/owner of the insured vehicle namely Mr.Bharath Narandran.

5. The fifth respondent Insurance Company is directed to deposit the entire award amount together with interest at 7.5% per annum from the date of filing of the claim petition till the date of such deposit, within a period of eight weeks from the date of receipt of the copy of this Judgment.

6. On deposit of the award amount, the appellants/claimants are entitled to withdraw the same together with interest as directed by the Tribunal, less any amount already withdrawn, by filing suitable application before Tribunal.

7. With the above observation and direction, this Civil Miscellaneous Appeal is allowed. No cost.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

arb

To: The Motor Accidents Claims Tribunal,
First Additional District Judge,
Erode.

+1cc to Mr.N.Manokaran , Advocate SR.No. 27457

C.M.A.No.1995 of 2008

A.SK(29.12.2020)