IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.10.2020

PRONOUNCED ON : 05 .11.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.9 of 2007
and
M.P.Nos.1 to 3 of 2010
(Through Video Conferencing)

Oriental Insurance Co., Ltd.,
rep.by its Divisional Manager,
Katpadi Road, Vellore. ...Appellant/4th Respondent

vs.

1.Valliyammal

2.Andal ..1&2 Respondents/Petitioners

3.M.Sankaran

4.A.P.Raman

5.United India Insurance Company,
TKM Complex, Vellore.
(R3 and R4 exparte before the Tribunal) ...3 to 5 Respondents/ 1 to 3 Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 20.07.2006 made in M.C.O.P.No.257 of 1998 on the file of the Motor Accident Claims Tribunal (Sub Court), Vellore.

For Appellant : Mr.S.Arunkumar

For Respondents 1 & 2 : Mr.R.D.Ashok Kumar for M/s.S.N.Ravichandran

For R5 : No Appearance

JUDGMENT

The Insurance Company is the appellant in this appeal and is aggrieved by the impugned Judgment and decree dated 20.07.2006 passed by the Motor Accident Claims Tribunal (Sub Court), Vellore in M.C.O.P.No.257 of 1998.

2. By the impugned Judgment and Decree, the Tribunal has

awarded a compensation of Rs.3,05,500/- to the respondents / claimants 1 & 2 herein together with interest at 9% per annum from the date of filing of the claim petition till the date of deposit.

3. The respondents 1 and 2 are the mother and sister of the deceased Babu @ Mohana Sundar who allegedly met with an accident on 02.06.1997 while driving a TVS50 bearing Reg.No.TN.23.C.1997. It was alleged that the insured tractor bearing Reg.No.TN.23 X 0670 insured with the 5rd respondent-Insurance Company was driven by one A.P.Raman, the 4th respondent in a rash and negligent manner knocked down the said TVS 50 as a result of which the deceased Babu @ Mohanasundar sustained grievous injuries and later succumbed to the injuries and died in the hospital.

4. In the claim petition filed before the Tribunal, the owner of the tractor and on United India Insurance Company Limited TKM Complex, Katpadi Road, Vellore, the 3rd and 4th respondents herein were made parties. Later, the appellant was impleaded as the insurer of the said tractor.

5.The appellant has questioned the reasoning of the Tribunal fixing the liability on it. While awarding compensation to the 1st and 2nd respondents herein. This appeal was taken up for hearing on 30.10.2019, 30.10.2019 and 19.11.2019 and finally reserved for Judgment on 09.10.2020.

6.The main case of the appellant in this appeal is that the said tractor was not insured by it and the liability has been fastened on it by placing reliance on an incorrect endorsement in Ex.P.6 - Motor Vehicle Inspection Report in Form-AIR. It is submitted that it was not sufficient to fasten liability on the appellant. It is submitted that there is a tampering of the said certificate and that in any event the said certificate as against Sl.No.10, the name of the insurer and the date of expiry of the insurance policy has been given as follows:

10. Date of expiry of insurance certificate and name and address of the company which issued policy in respect of the vehicle 26.5.1998. * The oriental Insurance Company.	:	*6.3.1998 United Insurance Co., Ltd.,

(*written by the Motor Vehicles Inspector in hand)

7.It is submitted that the appellant - Insurance Company had sent notice to 3rd respondent, owner of the tractor vide Ex.R1 to produce documents to substantiate that the said tractor was insured with the appellant. It is further submitted that Ex.R.1 was also duly acknowledged vide Ex.R2. Though there is discussion about the same in para 5 of the impugned Judgment and decree there is no final conclusion. The witness of appellant, R.W.1-Legal Assistant who was working in the office of the appellant-Insurance Company had also produced the ledger for perusal before the Court of demonstrate that no premium was collected by the appellant-Insurance Company from the 3rd respondent owner of the accident vehicle and therefore there was no record to indicate that premium was either paid or collected by the appellant from the 3rd respondent .

8. The defending the impugned order, the learned counsel for the respondents 1 and 2 submits that the impugned order of the Tribunal was well reasoned and it cannot be interfered in this appeal before this Court under Section 173 of the Motor Vehicles Act.

9.It is further submitted that the Tribunal has given a fair conclusion to arrive at a just compensation. Further, the accident is of the year 1997 and 27 years of lapsed since then and therefore it would be unfair to disallow the claim or remand the case back to the Tribunal.

10. I have considered the arguments advanced by the learned counsel for the appellant and the respondents 1 and 2 and also perused the evidence available on record.

11.The Tribunal has awarded the compensation based on Ex.P.6 – Motor Vehicles Inspection Report in Form-AIR. The relevant portion of the M.V.I.Report extracted above.

12. The said report not only indicates the name of the appellant but also the name of the 5th respondent United India Insurance Company, Vellore. The appellant-Insurance Company appears to have discharged the initial burden of proof by producing the ledger content before the Tribunal. However, there is also no proper discussion on the defence raised by the Appellant in the impugned Judgment and decree.

13. I am therefore of the view that liability cannot be fastened on the appellant merely based on the endorsement in the Motor Vehicles Inspector since it mentions that both the appellant and 5th respondent as insurer of the accident tractor at the time of accident. At the same time, claim for just compensation should not be denied to the claimants as it defeat the very purpose of the Act.

14. I am therefore of the view that this is a fit case for being remitted back to the Tribunal to re-examine the issue

afresh as to whether the appellants or the 5th respondent Insurance company or any other Insurance Company had given insurance cover to the accident vehicle or whether there was no insurance cover at all at the time of the accident and the names of Insurance Companies have been wrongly mentioned therein without any basis.

15. Both the appellants and the 5th respondent may produce the evidence from their records to substantiate their defence before the Tribunal. The claimants may also taken the help of Regional Transport Office.

16. Accordingly, the impugned order passed by the Tribunal is to be set aside and the case is remitted back to the Tribunal for passing fresh order. The learned Principal District Judge, Vellore may also send a notice to the RTO, Vellore to produce the records which formed the basis of endorsement in Ex.P.6 by the Motor Vehicles Inspector.

17. The learned Principal District Judge, Vellore shall pass appropriate orders on merits and in accordance with law after ordering fresh notice on all the parties. Respondents 1 and 2-claimants shall take necessary steps for the aforesaid purpose. Needless to state that, the Tribunal shall endeavour to complete the proceedings pursuant to this order within a period of twelve months from the date of receipt of a copy of this order.

18. In the result, this civil miscellaneous appeal is allowed by way of remand. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

kkd
To:
1. The Principal District Judge, Vellore.

2. The Motor Accidents Claims Tribunal,
Subordinate Judge, Vellore.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.35948
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.36224

C.M.A.No.9 of 2007

PVS(CO)
RGA(09/12/2021)