

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.1083 of 2015

And

M.P.No.1 of 2015

United India Insurance Co. Ltd.
Post Box no.34,
G.G.Complex,
Kumaran Road,
Tiruppur-641 601.

... Appellant/Respondent No.2

Vs.

1.Kaveriammal ... Respondent-1/Petitioner-1
2.Kavipriya ... Respondent-2/Petitioner-2
3.Minor Sowmiya ... Respondent-3/Petitioner-3
4.Palaniammal ... Respondent-4/Petitioner-4
5.P.R.Subramaniam ... Respondent-5/Respondent-1
(R-3 minor represented by her
Mother and Guardian Kaveriammal)

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 09.10.2014 passed in M.C.O.P.No.162 of 2009 on the file of the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Mettur.

For Appellant : Mr.S.Arun Kumar

For Respondents-1to4 : No Appearance

J U D G M E N T

The present Civil Miscellaneous Appeal is directed against the judgment and decree dated 09.10.2014 passed by the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Mettur in MCOP No.162 of 2009.

2. The alleged accident occurred on 17.09.2009 at about 09.00 P.M., at Dharapuram to Tiruppur Road, Suria Nallur, near Ramanathapuram Bridge, Kundadam Police limit, Tiruppur

District. Kundadam Police Station registered a case in Crime No.314 of 2009.

3. The facts reveals that it is case of hit and run and the deceased admittedly was riding a two wheeler TVS Star bearing Registration No.TN-39-AB-4990.

4. The learned counsel appearing on behalf of the appellant/ Insurance Company mainly contended that there is no coverage of policy in view of the fact that the rider of the two wheeler died. It is a case of hit and run. Thus, there is no coverage as the driver is stepping into the shoes of the owner of the vehicle.

5. Though the deceased was not the owner of the vehicle, since he was riding the Motorcycle at the time of accident, it is to be construed that he stepped into the shoes of the owner and therefore, he has not covered under the policy issued by the appellant/Insurance Company. In the absence of any contract of valid policy, the appellant/Insurance Company is not liable to pay compensation.

6. This apart, the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 and such a claim petition can be entertained only in the event of establishing that the policy coverage was in force and the tort-feasor has to be fixed and accordingly vicarious liability is also to be ascertained. Consequently, only in the event of fixing the tort-feasor, the vicarious liability can be fixed on the owner of the vehicle and thereafter, the appellant/Insurance Company made liable to pay compensation.

7. This being the procedures and the scope of the claim petition under Section 166 of the Motor Vehicles Act, 1988. In the present case, the accident reveals that it is a hit and run case. The rider of the vehicle was the deceased and therefore, the Tribunal has wrongly arrived a conclusion that the appellant/Insurance Company is liable to pay compensation.

8. Even in the counter, the appellant/Insurance Company stated that there is no contract and therefore, the claim petition cannot be entertained. This apart, the deceased was not having a valid driving license also. Section 161 (1)(b) of the Motor Vehicles Act, 1988 states that " 'hit and run motor accident' means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in site of reasonable efforts for the purpose".

9. In the present case, a case was registered by the police, however, they have submitted a non-traceable report and accordingly, the criminal case was closed. Thus, it is made clear that tort-feasor has not been fixed and no vicarious liability can be fixed on the owner of the vehicle in the absence of identifying the offending vehicle, if any. Thus, the claim petition cannot be entertained under Section 166 of the Motor Vehicles Act, 1988.

10. This being the principles to be followed, the Tribunal has not considered all these aspects and further the judgments referred by the Tribunal are not having any direct relevance with reference to the facts and circumstances of the case on hand.

11. Accordingly, the the judgment and decree dated 09.10.2014 passed by the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Mettur in MCOP No.162 of 2009 is set aside. Consequently, C.M.A.No.1083 of 2015 stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

12. It is brought to the notice of this Court that the Award amount has already been deposited by the appellant. Thus, the appellant/ Insurance Company is permitted to withdraw the deposited amount with accrued interest, by filing an appropriate application before the Tribunal. However, the claimant is at liberty to approach the Competent Authority for claiming compensation under Section 161 of the Motor Vehicles Act, 1988.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Sub Judge,
Sub Court-cum-
Motor Accidents Claims Tribunal,
Mettur.

Copy to

The Section Officer
VR Section
High Court Madras

+1 cc to Mr.D.Arunkumar Advocate sr22724

CMA No.1083 of 2015

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