IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2010

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3044 of 2010
and
MP.No.1 of 2010

Branch Manager,
National Insurance Company Limited,
Branch Officer, No.305,
Bangalore Road, Krishnagiri Town.
... Appellant/2nd Respondent

Vs.

1.Manickam ... 1st Respondents/1st Respondents
2.Rajappan(deceased)

3.Sarojamma ... 3rd Respondent

4.Anbalagan ... 4th Respondent

5.Chinnathambi ... 5th Respondent

6.Subramani ... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.408 of 2001 on the file of the Motor Accident Claims Tribunal (Additional Special Court) Krishnagiri dated 29.09.2006.

For Appellant : Mr.D.Bhaskaran

For Respondents : R1 - Mr.Mukund R Pandiyan
R2 - Deceased
R3 to R6 not ready in notice

J U D G M E N T

The appellant/United India Insurance Co Ltd., who is the second respondent in MCOP.No.408 of 2001, dated 29.09.2006 on the file of the Motor Accident Claims Tribunal, Additional Special Judge, Krishnagiri is challenging the judgment and decree the appellant preferred this Civil Miscellaneous Appeal.

2. The case of the claimant/1st respondent is that on 14.08.2000 at about 09.00 p.m., when the appellant was walking on the extreme left side mud portion of the Eagadathampalli to Banthiguri road, towards Banthiguri, the Tractor bearing Registration No.TN-29-V-6161, which was coming behind the appellant without following any traffic rules and hit behind the appellant. Due to the said impact, the appellant sustained grievous injuries all over his body.

3. During the pendency of the claim petition the owner of the vehicle/1st respondent herein had died and his legal heirs have been brought on record as respondents 3 to 6.

4. In order to prove the case of the claimant before the Tribunal, P.W.1 and P.W.2 were examined and Ex.P1 to P6 were marked. During the trial, on the side of the second respondent, no oral and documentary evidence were produced.

5.Based on the evidence both orally and documentary, the Tribunal has held that the accident has taken place, on account of the rash and negligence driving of the driver of the tractor and awarded a sum of Rs.1,96,560/- as a compensation, payable by the Insurance Company, challenging the same the present appeal has been filed by the Insurance Company.

6. The learned counsel for the appellant submitted that the tribunal ought to have noted that the claimant traveled as an unauthorized passenger in the insured tractor at the time of accident. Further, the Tribunal has failed to take into account Ex.P2/Wound certificate issued by St.John's Medical College Hospital, wherein, it has been mentioned that the claimant fell from a height of 7 ft. The learned counsel vehemently contented that the Tribunal did not note of the fact that the first respondent has not impleaded the driver of the vehicle in the proceedings, inspite of defence taken that the claimant fell down from moving tractor. There is no independent witness examined to prove the manner of the accident and negligence on the part of the driver of the vehicle. The First Information Report was lodged by the brother of the Claimant, by suppressing facts to get an untenable compensation from the appellant. The Tribunal has failed to note that under Sec.166 of M.V.Act, the Claimant has to prove that the driver of the vehicle was negligent. Considering the facts and circumstances of the case, the Tribunal ought to have easily come to the conclusion that the claimant has traveled as unauthorized passenger in the Tractor and therefore, he is not entitled to claim compensation from the appellant. The Tribunal has also failed to note that as per Ex.P4/policy does not cover the liability to the

claimant/1st respondent and the Insurance Company has no liability to pay compensation. Hence, the learned counsel prays to allow the appeal.

7. From the FIR it is proved that due to rash and negligent driving of the driver, the said accident has been caused. Pursuant to the same, a case has been registered against the driver of the said Tractor and no contrary evidence has been produced to dispute the same as against the driver of the tractor. The driver of the tractor has not been examined to say anything about the accident. In the absence of any such evidence, the owner of the vehicle, is vicariously liable to pay the compensation to the claimant for driving the vehicle in a rash and negligent manner and causing accident. The appellant herein contended that the claimant has to prove the accident. Once the claimant had furnished the policy details in the claim petition, it is for the insurance company to produce the original copy of the policy to establish its contentions thereby disproving the claimant's contention. The insurance company had contended that the Tribunal has failed to note that the contentions mentioned in Ex.P2/wound certificate of ST.John's Medical College Hospital, wherein it is mentioned that the claimant fell from a height of 7 ft., Further the first respondent has not impleaded the driver of vehicle in the proceedings inspite of defence taken that the claimant fell down from moving tractor, which is in total violation of terms and conditions of the insurance policy. Hence, it is found that the insurance company is not liable to pay the compensation.

8. The Court below had erroneously concluded that the insurer is liable to pay the compensation. The learned counsel for the appellant submitted the policy condition has been violated by the owner of the vehicle, the 2nd respondent/owner ought to have been held liable for the compensation. Thus, in view of the specific finding rendered by the Tribunal regarding the manner of the accident and the negligence on the part of the driver, the finding of the Tribunal fastening the liability on the insurer of the tractor is baseless and unfounded. Hence, the insurer company is directed pay the amount and recover it from the vehicle owner.

9. In the result, the Civil Miscellaneous appeal is allowed. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, at the first instance, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of MCOP.No.408 of 2001 and recover the same from the respondents three to six, on behalf of the second respondent (as a legal heirs) within a period of two weeks thereafter. On such deposit being made by the Trial Court, the first respondent/claimant is permitted to

withdraw the award amount along with interest and costs, by filing necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Motor Accident Claims Tribunal
(Additional Special Court)
Krishnagiri

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 3679
+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No. 4406

C.M.A.No.3044 of 2010
and
MP.No.1 of 2010

SPD(CO)
GN(29/01/2021)