IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1172 of 2012

Branch Manager,
The Oriental Insurance Company Ltd.,
No.30/6E, First Floor, Teen Palace,
State Bank Road,
Mayiladuthurai Town,
Mayiladuthurai Taluk,
Nagapattinam District. ..Appellant/2nd Respondent

..Vs..

1. Vasantha
2. Prabakaran ..Respondents/Petitioner/1st Respondent
(Second respondent set ex-parte before the lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 31.01.2012 made in M.C.O.P.No.18 of 2010 on the file of the Motor Accident Claims Tribunal, (Principal District Judge) Thiruvarur.

For Appellant : Mr.R.Sivakumar

For Respondents: Mr.J.Nandagopal - R1
Mr.C.Prakasam - R2

J U D G M E N T
(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the insurance company challenging the award dated 30.01.2012 passed by the Motor Accident Claims Tribunal, (Principal District Judge) Thiruvarur in MCOP. No.18 of 2010.

2. A person by name Azhagirisamy, died on 13.07.2009 as a result of an accident caused by a lorry bearing registration No.TN 51 T 1923 owned by the second respondent and insured with

the appellant/insurance company.

3. The appellant/claimant is the dependent (mother) of the deceased Azhagirisamy. She preferred a claim before the Motor Accidents Claims Tribunal (Principal District Judge) Thiruvarur in MCOP No.18 of 2010, seeking a compensation of Rs.12,00,000/- for the death of her son Azhagirisamy.

4. The Motor Accidents Claims Tribunal, under the impugned award dated 30.01.2012 in MCOP No.18 of 2010 directed the appellant/insurance company to pay a compensation a sum of Rs.2,64,000/- to the claimant, together with interest and costs. The details of the award passed by the Tribunal in favour of the claimant are as follows:

Sl.No.	Heads	Award
1	Loss of income	2,54,000/-
2	Loss of love and affection	5,000/-
3	Transportation	2,000/-
4	Funeral expenses	3,000/-
	Total	2,64,000/-

5. The appellant/Insurance company aggrieved by the finding of the Tribunal that they are liable to compensate the claim of the first respondent and recover the same from the second respondent, who is the owner of the vehicle (insured) have preferred this appeal.

6. It is the contention of the appellant/ insurance company that on the date of the accident i.e. 13.07.2009, no insurance policy was issued by them to the second respondent. It is their contention that since there is no insurance coverage on the date of the accident, they are not liable to compensate the claim of the first respondent.

7. According to them, despite the filing of the insurance policy, which was marked as Ex.R6 before the Tribunal, by total non application of mind, the Tribunal has directed the appellant/insurance company to pay the compensation to the first respondent/claimant and recover the same from the second respondent.

8. Heard Mr.R.Sivakumar, learned counsel for the Appellant/Insurance Company and Mr.J.Nandagopal, learned counsel for the first respondent and Mr.C.Prakasam, learned counsel for the second respondent.

9. Before the Tribunal, the claimant/first respondent has filed six documents, which were marked as Ex.P1 to Ex.P6 and two witnesses were examined on her side viz., Vasantha, first respondent/claimant herself as PW1, Mr.Manikkavasagam - an eyewitness to the accident as PW2. On the side of the appellant/insurance company, six documents were filed, which were marked as Ex.R1 to Ex.R6 and one witness was examined viz., Ramanarayanan, an official of the insurance company as RW1 before the Tribunal.

10. Ex.R6 is the insurance policy for the subject vehicle, which was issued by the appellant/insurance company in favour of the second respondent. This Court has perused and examined Ex.P6/insurance policy. As seen from the insurance policy (Ex.P6), the insurance coverage for the subject vehicle, which was involved in the accident commences only from 16.07.2009 and ends on 15.07.2010 whereas the accident happened on 13.07.2009 itself. The date of the accident has not been disputed by the first respondent/claimant as she herself has pleaded in her claim petition that the accident took place only on 13.07.2009.

11. As seen from the impugned award, the Tribunal has also observed that on the date of the accident there was no insurance coverage. But, however, the Tribunal erroneously by total non application of mind and without following the settled position of law has held the insurance company liable to compensate the first respondent/claimant and recover the same from the second respondent, who is the owner of the vehicle (insured).

12. It is settled position of law, as laid down by the following decisions that when there is no insurance coverage on the date of the accident, the insurer cannot be made liable to compensate the claim.

(a) A decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Sobina Iakai and others reported in (2007) 7 SCC 786.

(b) A decision of a learned Single Judge of this Court dated 27.11.2019 passed in C.M.A.Nos.2319 of 2004 and 661 of 2007.

13. In the case on hand, the insurance policy has been issued by the appellant/insurance company only subsequent to the date of the accident. Hence, the Tribunal ought not to have granted pay and recovery rights.

14. For the foregoing reasons, this Court is of the considered view that the Tribunal has erroneously directed the appellant to pay the compensation amount to the second respondent. Therefore, the award passed against the Insurance Company has to be set aside and accordingly, the appeal is

allowed. However, it is made clear that the award passed against the second respondent/owner of the vehicle is confirmed. The appellant/insurance company is permitted to recover the assessed compensation amount from the second respondent by filing an execution petition before the Tribunal in accordance with law.

Conclusion:

15. In the result, the appeal is allowed. However, the rate of interest fixed by the Tribunal is confirmed. The second respondent/owner of vehicle is directed to deposit the entire award amount along with interest and costs to the credit of MCOP.No.18 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment.

16. On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the first respondent/claimant as per the order of this Court through RTGS within a period of four weeks thereafter.

17. The appellant/insurance company is permitted to obtain payment, out of the amount that they have already deposited before the Tribunal by filing an appropriate application. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
(Principal District Court) Thiruvarur.

2.The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.1172 of 2012

AK(CO)
CB(19/04/2021)