IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1815 of 2015
and
M.P.No.1 of 2015

The Divisional Manager,
United India Insurance Co.Ltd.,
Gandhi Road,
Arni Town and Taluk,
Thiruvannamalai District. ...Appellant/2nd Respondent

/versus/

1.Subramani
2.Govindammal ...Respondents 1&2/Petitioners 1&2
3.Govindasamy ...3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 09.06.2014 passed in M.A.C.T.O.P.No.85 of 2012 by the Subordinate Judge, Motor Accidents Claims Tribunal, Cheyyar.

For Appellant : M/s.R.RRathna Thara

For Respondents : No appearance

J U D G M E N T
(The case has been heard through video conference)

The appeal is directed against the award passed by the Motor Accidents Claims Tribunal at Cheyyar fixing the liability on the Insurance Company, to indemnify the owner of the tractor.

2. On 04.03.2012, in a two wheeler bearing registration No.TN-25-V-4825 Thiru.Settu, the rider and Thiru.Baskaran on pillion were travelling on Cheyyar to Vandavasi Main Road at Appakkam Village near Perumpoondi Kootroad at about 21.00 hrs, a tractor bearing registration No.TN-21-AY-5927 with a trailer bearing registration No.TN-21-T-6441 rash and negligently dashed against the two wheeler. Both the rider Thiru.Settu and the pillion rider Baskaran died on the spot. The claim petition filed by the dependants of the pillion rider. In the claim

petition, it is stated that at the time of his death the deceased Baskaran was earning Rs.20,000/- per month as cable labour and welder. He was 25 years, Claim was made against the owner of the tractor and its insurer for compensation of Rs.20 Lakhs.

3. The claim petition was contested by the Insurance Company stating that the relationship between the deceased and the claimants not admitted. They have to prove that they are the dependants of the deceased. The accident occurred due to the reckless act of the deceased. In any event, the rider of the two wheeler has contributed to the accident. Hence the owner of the two wheeler and its insurer is liable to indemnify for the contributory negligence. The motorcycle rider Settu had no valid driving license at the time of accident and there was no fault on the tractor driver.

4. During the trial, it was canvassed before the Tribunal that the driver of the 1st respondent namely the tractor owner had no valid license and the vehicle was not insured with the 2nd respondent. The income of the deceased was also suggested to be on the higher side.

5. The Tribunal has awarded a sum of Rs.10,50,000/- as compensation payable to the claimants by the Insurance Company. Aggrieved by that, the present appeal is filed on the ground that the Tribunal ought to have fixed the income of the deceased at Rs.6.500/- per month notionally. In the absence of any proof to substantiate his avocation and skill, fixation of Rs.10,000/- as monthly income is excessive and exorbitant. The Tribunal failed to appreciate the evidence of RW.1. In spite of eliciting the fact that the trailer attached to the tractor was not insured with them. The accident occurred when the tractor hit the two wheeler and wheels of the trailer ran over the deceased. Two vehicles, the tractor and trailer have involved in the accident. They two different vehicles with different registration numbers. The tractor alone is insured under them. Hence, the trailer owner who has not insured his trailer is liable for the contribution of negligence.

6. The impugned award reveals that the Tribunal on appreciating the evidence of Raja, who was examined as RW.1, and the copy of the policy marked as Ex.P-4 has presumed that both the tractor as well as trailer were under the insurance coverage of the appellant/Insurance Company. Hence, fixed the liability to pay jointly and severally by the owner of the tractor, trailer and the insurer of the tractor.

7. The learned counsel appearing for the appellant would point out that the tractor bearing registration No.TN 21 AY 5927 alone was insured under them and the trailer attached to the said tractor at the time of accident was not insured under them or any other Insurance Company.

8. On perusing the records and depositions of the witnesses, this Court finds that the tractor insured under the appellant/Insurance Company was carrying sugar cane in the trailer attached to it. The said trailer was not duly insured. The accident has occurred, when the tractor and the two wheeler colluded. Based on the First Information Report and final report, the Tribunal has held that the tractor driver was at fault. Due to his negligence, the accident has occurred.

9. Now the point for consideration is whether the insurer has to indemnify the entire award amount or the award amount has to be split between the insured and the insurer, since the trailer attached to the tractor has not been insured.

10. This Court, in an earlier occasion, while considering the accident involving tractor and trailer has observed that the trailer left alone cannot fall under the definition of Motor Vehicle. If trailer is not attached with any propulsion motor, it cannot move on its own. Once a trailer is attached to the tractor, it becomes a single unit vehicle. The owner of the trailer as well as the owner of the tractor are equally liable for any loss. For the violation of the policy, the Insurance Company is entitled to recover 50% from the tractor owner Thiru.Govindasamy/3rd respondent herein, who has attached the insured tractor to an uninsured trailer. Whether the tractor and the trailer are owned by one and the same or different persons before plying on the road the tractor owner should ensure that the tractor as well as the trailer attached to it are duly insured. If there is any lapse on the part of the owner, it amounts to violation of policy condition as well as the Motor Vehicle Act. In such case, the insurer have no responsibility to indemnify the owner. In this case it is proved that the tractor was insured under the appellant, but the trailer had no insurance coverage. Hence, this Court holds only 50% of the liability fall on the insurer, to indemnify. The balance 50% the vehicle owner has to pay.

11. As far as the quantum of compensation is concerned merely based on the passport, the Tribunal has fixed notional income of the deceased person at Rs.10,000/-. Possessing a passport is not a proof for income. In this case, the Tribunal ought to have fixed at the most Rs.6,500/- per month as notional income for the deceased. This Court also notice that the Tribunal has not awarded any additional compensation towards future prospects for the bachelor who died at the age of 25 years. Therefore, taking note of the fact that any reduction of fixation of notional income and addition towards future prospects together will not alter much in the quantum of compensation, hence the award is left unaltered as such.

12. The learned counsel appearing for the appellant would submit that at the time of admission, this Court directed the

insurer to deposit a sum of Rs.8,00,000/- together with proportionate accrued interest and costs. Accordingly, they have deposited Rs.8,00,000/- with interest. In such case, the balance award amount shall be deposited within a period of twelve weeks from today. Thereafter, the appellant shall recover 50% of the total money deposited from the vehicle owner Thiru.Govindasamy, following the principle of “pay” and “recover.” The respondents 1 and 2/claimants are permitted to withdraw the award amount on filing appropriate application.

13. Accordingly, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
   Motor Accidents Claims Tribunal,
   Cheyyar.

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

C.M.A.No.1815 of 2015
and M.P.No.1 of 2015

RR(CO)
RGA(11/08/2021)