IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1844 of 2015
and
C.M.P.No.13518 of 2017& M.P.No.1 of 2015

K.Appollo .. Appellant/1st respondent

Vs.

1.Meenakshi

2.Minor Chellammal

3.Minor Kulanchiappan

4.Minor Muniammal

Minor respondents 2 to 4 are represented by their mother and Guardian Meenakshi, the 1st respondent .. Respondents/Claimant

5.United India Insurance Company
No.100, South Street,
Chidambaram,
Cuddalore District ..5th Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decreetal orders (award) passed in MACTOP No.1164 of 2003 dated 31.03.2015 on the file of the Motor Accidents Claims Tribunal (II Additional District & Sessions Court), Chidambaram.

For Appellant	:	M/s.A.Muthukumar
For R1 to R4	:	No appearance
For R5	:	Mr.G.Udaya Sankar

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 31.03.2015 made in MACTOP No.1164 of 2003 on the file of the Motor Accidents Claims Tribunal (II Additional District & Sessions Court), Chidambaram.

2.The Appellant is 1st respondent in MACTOP No.1164 of 2003 on the file of the Motor Accidents Claims Tribunal (II Additional District & Sessions Court), Chidambaram. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the death of one Tamizhmani @ Subramian who died in the accident that took place on 30.06.2002.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Maruthi Zen car belonging to the appellant and directed the appellant to pay a sum of Rs.7,00,000/- as compensation to the respondents 1 to 4. The Tribunal dismissed the claim petition as against the 5th respondent.

4.Challenging the award of the Tribunal, dismissing the claim petition as against the 5th respondent, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the appellant sold the Vehicle on 06.01.2000 to one Arumugam. The appellant has marked Ex.R5-receipt issued by the said Arumugam for having purchased the vehicle from the appellant. The Tribunal erred in not placing any reliance upon Ex.R5. P.W.2 in his cross examination has admitted that he is the owner of the vehicle on the date of accident, having purchased from 3rd party. In F.I.R it has been stated that one Maruthi Zen Car was involved in the accident and non-impleading the owner and insurer of the Maruthi Zen car is fatal to the claim of the respondents 1 to 4. Without any alteration in the F.I.R., the charge sheet filed against P.W.3 Chandran is suspicious one. The Tribunal ought to have allowed the 5th respondent/Insurance Company to examine the Inspector of Police with regard to nature of accident and involvement of Maruthi Zen car. The Tribunal ought to have held that the accident has occurred due to collusion of Maruthi Zen car and Motorcycle. The Tribunal erred in rejecting the claim of the Insurance Company for summoning the criminal records. The Tribunal ought to have examined the Village Administrative Officer to prove the contents of F.I.R. The Tribunal failed to see that Ex.P14 Insurance policy which covers the risk to pillion rider also the word that "Comprehensive Premium'' was not struck-off or scored-off and therefore, the same is comprehensive policy. Ex.P14 is comprehensive policy. Therefore, the Tribunal erred in passing liability on the appellant. The Insurance company ought to have collected proper premium for comprehensive policy. The 5th respondent /Insurance Company did not take stand in the counter statement that policy issued is only Act Only Policy and prayed for setting aside, the award of the Tribunal against the appellant.

6.Per contra Mr.G.Udaya Sankar, the learned counsel appearing for the 5th respondent contended that on the date of accident, the vehicle was registered in the name of the appellant only, and the insurance policy issued in the name of the appellant. The sum of Rs.77/- was paid to cover the 3rd party risk. Policy issued by the appellant is Act Only Policy and premium Rs.77 was paid to cover 3rd party risk. No premium was collected to cover pillion rider. The Tribunal has verified Ex.P14 policy and rightly exonerated the 5th respondent/ Insurance Company and prayed for dismissal of the appeal.

7.Though Notice has been served on the respondents 1 to 4 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 5th respondent/Insurance Company and perused all the materials available on record.

9.It is the contention of the respondents 1 to 4 before the Tribunal that P.W.3 Chandran drove the Motorcycle in a rash and negligent manner and caused the accident in which, deceased sustained fatal injuries and died on the spot. To substantiate the said contention, they examined P.W.2 and P.W.3 chandran, who drove the motor cycle. On the other hand, it is the contention of the appellant and 5th respondent that as per F.I.R one Maruthi Zen car was involved in the accident and accident has not occurred as alleged by the respondents 1 to 4. From the award of the Tribunal, it is seen that Village Administrative Officer has lodged the complaint and F.I.R was registered based on the said complaint. The Village Administrative Officer in the compliant has stated that the one Maruthi Zen car was found in damaged condition after 75 meters and one unidentified dead body aged about 32 years was found. The Village Administrative Officer was not an eye-witness and he has not stated as to how the accident has occurred and involvement of another vehicle. It is seen that P.W.3 Chandran who drove the motor cycle appeared before the concerned Police Station and given statement that he drove the Motor cycle in rash and negligent manner and accident has occurred due to that and the deceased died due to the injuries sustained in the accident. The Police investigated the case and filed a charge sheet against P.W.3, he pleaded guilty and paid fine. The appellant or 5th respondent did not examine any witness to substantiate their claim about involvement of Maruthi Zen car. The respondents 1 to 4 filed EX. P2 Motor Vehicle Inspector's report with regard to motorcycle which shows that there are several damages caused to the Motor Cycle and there is no mechanical defect. The Tribunal considering the evidence of P.W.3, charge sheet and the fact that P.W.3 pleaded guilty and paid amount, held that accident has occurred only due to rash and negligent riding by rider of the motor cycle, P.W.3 and the deceased died due to injuries sustained in the accident. There is no error in the said finding of the Tribunal warranting interference by this Court.

10. As far as liability to pay compensation is considered, it is the case of the appellant that he sold the motor cycle on 06.01.2020 to one Arumugam. To prove the same, the appellant produced Ex.R5 receipt issued by the said Arumugam. Ex.R5 was not accepted by the Tribunal as the same was not proved by examining author of the said letter. Further insurance policy issued by 5th respondent was in force when the accident has occurred. The insurance policy was issued in the name of the appellant. The appellant was shown as owner in the Registration Certificate. In view of these facts, the Tribunal held that appellant is only the owner of the motor cycle. It is well settled that unless name of the owner is changed in the Registration Certificate, the claimant cannot be driven to necessity of finding of owner of the vehicle at the time of accident and make the claim against the alleged owner. This issue was considered by the Hon’ble Apex Court in the judgment reported in 2018 (2) CTC 91 [Naveenkumar Vs. Vijay Kumar]. The Hon'ble Apex Court has held that claimant cannot go on searching who is the real owner and make a claim when the name of the owner/transferer was not changed in the R.C.Book. The person who is shown as owner in R.C.Book is liable to pay compensation to the claimant along with owner of the vehicle at the time of accident. As per the provisions of Section 173(1) of the Motor Vehicles Act, the person whose name is mentioned in the registration certificate is deemed to be owner of the vehicle.

11.The Tribunal has exonerated the 5th respondent from its liability accepting the evidence of R.W.1 that policy issued by the 5th respondent is Act Only Policy. The 5th respondent has not taken such a stand in the counter statement that the policy issued by the 5th respondent is Act Only Policy and it does not cover pillion rider. The 5th respondent is not entitled to let in evidence or argue the case before the Tribunal without any pleadings. The Tribunal erred in accepting the evidence of R.W.1 and holding that E.x.P.14 Insurance Policy is Act Only Policy.

12.On verification of the policy, Ex.P14, it is seen that 5th respondent received comprehensive premium of Rs.77/-. It is not mentioned about the nature of policy in E.x.P.14. In view of absence of pleadings that E.X.P.14 is Act Only Policy, the 5th respondent is not entitled to let in evidence and argue the same before the Tribunal. The Tribunal erred in relying on evidence of R.W.1 and arguements of counsel for 5th respondent and exonerated the 5th respondent/Insurance Company. For the above reason, award of the Tribunal dismissing the claim petition against the 5th respondent is set aside. I hold that 5th respondent is liable to pay compensation on behalf of the owner of the vehicle. The 5th respondent is directed to pay compensation to the respondents 1 to 4.

13.With the above modification, the Civil Miscellaneous Appeal stands allowed and the compensation awarded by the Tribunal is confirmed. The learned counsel for the appellant submitted that as per the order of this Court dated 27.08.2015 made in M.P.No.1 of 2015 in C.M.A.No.1844 of 2015, he has deposited a sum of R.2, 25,000/- to the credit of the M.A.C.T.O.P.No.1164 of 2003. The appellant is permitted to withdraw the same by filing the necessary application before the Tribunal. The 5th respondent/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and cost within a period of 6 weeks from the date of receipt of a copy of this Judgment. On such deposit, the 1st respondent is permitted to withdraw her share of the award amount along with proportionate interest and cost as per apportionment made by the Tribunal less the amount already withdrawn if any. The shares of the minors/Respondents 2 to 4 are directed to be deposited in any one of the Nationalised banks till the minors attain majority. The 1st respondent being mother of the respondents 2 to 4 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsn

To
1. The Motor Accidents Claims Tribunal
(II Additional District & Sessions Court),
Chidambaram.

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

+1cc to M/s.A.Muthukumar , Advocate SR.No. 8007
+1cc to Mr.G.Udhayasankar, Advocate SR.No. 7947

C.M.A.No.1844 of 2015
and
C.M.P.No.13518 of 2017& M.P.No.1 of 2015

sai co
A.SK(10/11/2020)