IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2181 of 2012
and
M.P.No.1 of 2012

The Oriental Insurance Company Limited,
No.20, Gandhi Road,
Kallakurichi. ... Appellant/2nd Respondent

Vs.

Sithan (died)

1.Pappathi
2.Minor. Perumal ...Respondent 1 & 2/Petitioner 1 & 2
(Minor 2nd respondent represented by his father, Sithan)

3.M.Rajendran
4.Desingu ... Respondents 3 & 4/Respondents 1 & 3
(R3 and R4 remained exparte before Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.02.2011 made in M.C.O.P.No.672 of 2004 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellant : Mr.E.Rajadurai for Mr.M.B.Gopalan
For RR 1 & 2 : Ms.A.Indumathi for Mr.A.Sundaravadhanan

R3 and 4 Set Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 28.02.2011 made in M.C.O.P.No.672 of 2004 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellant is the 2nd respondent in M.C.O.P.No.672 of 2004 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal. The respondents 1 and 2 along with one Sithan filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of one Ravikumar, who died in the accident that took place on 02.08.2001. Pending claim petition, the said Sithan died.

3.According to the respondents 1 and 2, on 02.08.2001 at about 01.00 A.M., while the deceased was travelling as a coolie in the Rig unit belonging to the 3rd respondent near Chitteruvu Nagulam Moopar Thottam, Pattiveeranpatti, Dindigul District, the driver of the Rig unit drove the same in a rash and negligent manner and due to the same, the said Ravikumar fell down and sustained grievous injuries all over his body and succumbed to injuries. The deceased was aged 18 years and was working as a Coolie under the 3rd respondent and earning a sum of Rs.4,000/- per month at the time of accident. Therefore, the respondents 1 and 2 along with one Sithan filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation against the respondents 3, 4 and appellant-Insurance Company, being the owner, driver and insurer of the Rig unit respectively.

4.The respondents 3 and 4, being the owner and driver of the Rig unit remained exparte before the Tribunal.

5.The appellant-Insurance Company, being the insurer of the Rig unit belonging to the 3rd respondent filed counter statement and denied various averments made by the respondents 1 and 2. According to the appellant-Insurance Company, the accident has not occurred as alleged by the respondents 1 and 2. The insured has to prove that they followed the terms and conditions of the policy and they have not violated either the policy conditions or the Motor Vehicle Act and Rules. The respondents 1 and 2 have to prove that the 3rd respondent is the owner of the Rig unit and the 3rd respondent has insured the Rig unit with the appellant-Insurance Company. The respondents 1 and 2 have to prove that they are the legal heirs of the deceased and also the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 and 2 is highly excessive and prayed for dismissal of the appeal.

6.Before the Tribunal, one Siddhan (died) was examined as P.W.1 and 1st respondent was examined as P.W.2. One Sekar, who is a Co-worker to the deceased was examined as P.W.3 and 5 documents were marked as Exs.P1 to P5. The appellant-Insurance Company examined one Manimozhi, Junior Assistant from RTO office as R.W.1 and one Chandrasekaran as R.W.2 and 2 documents were marked as Exs.R1 and R2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Rig unit belonging to the 3rdrespondent and directed the respondents 3, 4 and appellant-Insurance Company, being the owner, driver and insurer of the Rig unit to jointly and severally paya sum of Rs.3,10,000/- as compensation to the respondents 1 and 2.

8.Against the said award dated 28.02.2011 made in M.C.O.P.No.672 of 2004, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in holding that appellant-Insurance Company is liable to pay the compensation in respect of a passenger in a Rig unit, even if the deceased was travelling as an employee of owner. The Tribunal failed to see that there is no seating capacity in Rig mounted vehicle and policy issued by the appellant-Insurance Company is Act Policy and no premium was collected for any passenger. The Tribunal failed to see that driver of the vehicle did not possess valid driving license at the time of accident. Hence, appellant-Insurance Company is not liable to pay compensation for breach of policy condition and prayed for allowing the appeal.

10.The learned counsel appearing for the respondents 1 and 2 made submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the respondents 1 & 2 and perused the entire materials on record.

12.It is the contention of the respondents 1 and 2 that the deceased while travelling as a Coolie in the Rig unit, due to the rash and negligent driving by the driver of the Rig unit, died in the accident due to the injuries sustained by him in the accident. According to the respondents 1 and 2, the appellant-Insurance Company as insurer of the Rig unit is liable to pay the compensation. On the other hand, it is the contention of the appellant-Insurance Company that there is no seating capacity in Rig mounted vehicle and the policy issued by the appellant-Insurance Company is only Act Policy, which does not cover any passenger in the Rig unit. The appellant-Insurance Company has not taken such a plea in the counter statement filed before the Tribunal. The learned counsel appearing for the appellant-Insurance Company before the Tribunal contended that they are not liable to pay compensation to the respondents 1 and 2 as Ex.R2/policy does not cover the risk of the passengers travelling in the Rig unit. Now such a plea was taken in the grounds of appeal also. The appellant-Insurance Company is not entitled to raise such a plea before the Tribunal as well as before this Court as there is no pleadings in the counter statement. For the above reason, the finding of the Tribunal fastening the liability on the part of the appellant-Insurance Company is valid.

13.The appellant-Insurance has examined R.W.1/Junior Assistant from RTO office, who deposed that the driver of the Rig unit obtained driving license only on 06.02.2002 after the date of accident and on the date of accident, i.e., on 02.08.2001, he did not possess driving license. In view of the same, the award of the Tribunal directing the respondents 3, 4 appellant-Insurance Company, being the owner, driver and insurer of the Rig unit jointly and severally to pay compensation to the respondents 1 and 2 is set aside. At the same time, for not possessing driving license, Insurance Company cannot be exonerated fully. The claimants, who are third parties cannot suffer for the breach of policy condition by the insured. They must enjoy the fruits of the award and the award cannot be a paper award for the driver of the offending vehicle did not possess driving license. It is consistently held that Insurance Company must be directed to pay the compensation awarded at first instance and recover the same from the owner of the vehicle. Applying the said principle, the appellant-Insurance Company is directed to pay the compensation to the respondents 1 and 2 at the first instance and recover the same from the 3rd respondent-owner of the vehicle.

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the amount awarded by the Tribunal at Rs.3,10,000/- along with interest and costs is hereby confirmed.The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.672 of 2004 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal, at the first instance and then recover the same from the 3rd respondent-owner of the vehicle. On such deposit, the 1strespondent is permitted to withdraw her respective share of the award amount along with interest and costs, less the amount already withdrawn if any, by fling necessary application before the Tribunal. The share of the minor 2nd respondent is directed to be deposited in any one of the Nationalized Banks, till the minor 2nd respondent attains majority. On such deposit, the 1st respondent, being the mother of the minor 2^{nd} respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2^{nd} respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Principal District Judge,
Namakkal.

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

+1cc to Mr.M.B.Gopalan, Advocate Sr.20766

C.M.A.No.2181 of 2012

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