

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2845 of 2011

- 1.Gowriammal
- 2.Jothilingam
- 3.Kokila
- 4.Shanthi
- 5.Dhanalakshmi
- 6.Vadivammal
- 7.Kumar
- 8.Amulu

... Appellants/Petitioners

..Vs..

- 1.Yesupatham

2. The National Insurance Company Limited,
Rep by its Divisional Manager,
Divisional Officer, No.19, Officers Line,
Opposite to Lakshmi Theatre, Vellore.

3. Baskar

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.06.2010 and made in MCOP.No.5 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court (Fast Tract Court), Vellore.

For Appellants : Mr.M.Sivakumar
for Mr.V.Jaganathan

For Respondent 2 : Mr.S.Vadivel

R1 & R3 : Set Exparte Before Tribunal

JUDGMENT

(This Appeal has been taken up for hearing through Video Conferencing)

This Appeal has been filed by the claimants challenging the award dated 30.06.2010 passed by the Motor Accident Claims Tribunal (Additional District and Sessions Court, Fast Tract Court, Vellore) in MCOP.No.5 of 2005.

2. The claimants are the legal representatives of the deceased Rathinam who died in an accident occurred on 04.02.2003 caused by an auto bearing registration No.TN01-K-6901. They preferred a claim before the Motor Accident Claims Tribunal seeking compensation against the respondents for the death of Rathinam.

3. The Motor Accident Claims Tribunal exonerated the second respondent insurance company who was also the second respondent in MCOP.No.5 of 2005 on the ground that no insurance policy has been issued by the second respondent for the vehicle which was claimed to be the cause of the accident. However, the Motor Accident claims Tribunal has passed the award against the driver and owner of the auto bearing registration No. TN01-K-6901.

4. Aggrieved by the findings of the Tribunal exonerating the insurance company, this appeal has been filed by the claimants.

5. Heard Mr.M.Sivakumar representing Mr.V.Jaganathan, learned counsel for the Appellant and Mr.S.Vadivel, learned counsel for the second respondent.

6. It has been the consistent stand of the second respondent insurance company before the Tribunal that they have not issued any insurance policy for the vehicle which was the cause of the accident. The insurance policy has also not been marked by the claimants. Excepting for the receipt dated 13.03.2002 which was marked as Ex.P2 which reveals that a sum of Rs.1322 was received from M.Raja by the National Insurance Company Limited, the claimants have not filed any other document to establish that the second respondent insurance company has insured the vehicle which caused the accident. The receipt Ex.P2 is dated 13.03.2002, whereas the accident happened on 04.02.2003. Even according to the claimants, M.Raja is not the owner of the vehicle and that the respondents 1 and 3 in this appeal are the owners. The claimants have not produced any document before the Tribunal to prove that on the date of the accident, there was insurance coverage for the vehicle from the second respondent insurance company. The receipt dated 13.03.2002 Ex.P2 has been issued almost a year prior to the date of the accident. Before the Tribunal, the claimants have also not made M.Raja as a party to the proceedings nor was he examined as witness on their side.

7. There are also no inconsistencies in the evidence of the second respondent insurance company before the Tribunal and in their pleadings as well as in their oral evidence through Mr.Gnanasekaran (RW1). They have stated that they have not issued any insurance policy for the insured vehicle.

8. The Tribunal has rightly appreciated the evidence available on record and has rightly exonerated the second respondent insurance company from any liability.

9. This Court does not find any infirmity in the findings of the Tribunal. Accordingly there is no merit in this appeal and the same shall stand dismissed. The first and third respondents are directed to deposit the amount awarded by the Tribunal after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs to the credit of MCOP.No.5 of 2005 within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the Appellants/claimants are permitted to withdraw their respective shares of award amount along with accrued interest lying to the credit of MCOP.No.5 of 2005 by filing appropriate applications. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Additional District and Sessions Judge
Motor Accident Claims Tribunal
(Fast Track Court) Vellore

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

+1 CC to Mr.V.Jaganathan, Advocate sr 25230.

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NMI (CO)
SP(19/08/2020)