

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2684 of 2012
and M.P.No.1 of 2012

The New India Assurance Co. Ltd.,
46, Moore Street, Chennai - 1. Appellant/2nd Respondent

Vs.

1.Nirmala1st Respondent/Petitioner
2.Sheik Ammanullah2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 08.02.2012 made in M.C.O.P.No.4480 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judge of Court Small Causes, Chennai.

For Appellant : M/s. Elveera Ravindran

For Respondents : No Appearance - R1
R2 - Exparte

JUDGEMENT

The appeal filed by the appellant on the ground of liability, stating that the Tribunal went wrong in holding that the alleged accident was caused by the lorry bearing Registration No. TN 74 L 7553 and the driver did not have a valid and effective driving license to drive the lorry. The Tribunal failed to appreciate that the appellant discharged their burden to prove that the insured has committed breach of condition of policy by sending legal notice to the insured and the driver of the lorry bearing Registration No. TN 74 L 7553. Further, no liability can be fastened on anyone who has no liability and only the second respondent/owner of the vehicle was responsible, if any compensation is to be payable to the claimants. Only when the person has valid driving license, he can be permitted to drive the said vehicle and if there are any violations of the said conditions, the appellant/Insurance Company is not liable to pay any compensation.

2. The case of the first respondent is that on 09.10.2007, the driver of the dipper lorry bearing

Registration No. TN 74 L 7553 moved in a reverse direction without giving any signal and dashed the deceased viz., N.Dillibabu. He sustained serious multiple injuries, which resulted into death. The first respondent is the mother of the deceased. The deceased was aged about 19 years and was a coolie cum cleaner in dipper lorry bearing Registration No. TN 74 L 7553 and earned Rs.4,500/- per month. On the side of the first respondent, two witnesses were examined as PW1 and PW2 and Ex.P1 to Ex.P5 were marked. On the side of the appellant, witnesses, RW1 and RW2 were examined and Ex.R1 to R3 were marked.

3. A perusal of the counter affidavit filed by the appellant/Insurance Company discloses that the accident is only due to the negligence of the deceased and the driver of the lorry is not responsible for the accident, as the lorry was driven by one Radhakrishnan, who did not possess any valid driving license at the time of driving the dipper lorry.

4. Heard the learned counsel for the appellant and perused the documents placed on record.

5. On going through the materials available on record and the evidences of the said RW1 and RW2, wherein, the RW1, who is the Investigator appointed by the appellant/Insurance Company, submits that he has not filed anything to show that the said driver did not possess any valid license. He also submitted that the driver of the Lorry has valid license, but the name was not renewed. He has only sent a letter to the owner and the driver of the vehicle to produce certain documents. More than that he has not received any documents from the owner. The Investigating Officer also has not enquired the second respondent or the driver in person. From the evidence of RW2, it is clear that since the driver of the Lorry has left the said area and went away, the Investigating Officer was not in a position to examine. Secondly, when the owner was examined, he had submitted that the driver has left the place and had worked in the said lorry only for three days and the owner did not have any other address proof of the residence of the driver. Hence, the said Investigating Officer was not in a position to examine the driver of the lorry. In the claim petition, even though an address has been given, the Investigator (RW2) has not chosen to visit the said address and enquire about the said driver and simply had stated that the driver possessed driving license, but the same was not renewed. All the documents did not possess any sign from the driver. From the investigation, RW2 found that the old driver had a license but whether it was in subsistence or not, was not known and the same was not proved by any other evidence. RW2 has not visited the R.T.O's office to find out whether the said insurance was in existence or it has expired.

6. That being the case, when the appellant/Insurance Company has not proved the case beyond the several doubts, the Court below has rightly come to the conclusion that the Insurance Company is liable to pay the compensation and awarded a sum of Rs.5,24,000/- as compensation. The appeal grounds do not stand, as the Insurance Company has not proved their case with valid materials that there is a violation of policy conditions.

7. Accordingly, the Civil Miscellaneous Appeal filed by the Insurance Company is dismissed. Connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judge,
Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

+1cc to M/s.Elveera Ravindran, Advocate SR.16061

C.M.A.No.2684 of 2012

SJ(CO)
CB(15/09/2020)

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