

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1817 of 2016

1.Stephen

Ruckmani (Died)

.. Appellant/Petitioner

Vs.

1.J.R.Wilson

2.Smyrana Fellowship Trust,
Rep. by its Manager Mrs.Rani,
Wife of Faster Raj,
The Nilgiris.

3.M/s.United India Insurance Company Limited,
Rep. by its Divisional Manager,
Ootacamund,
The Nilgiris.

.. Respondents/Respondents

(Cause title accepted vide order dated
15.07.2014 made in M.P. No. 1/2014 in
C.M.A.SR. No. 6593/2014)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.01.2009 made in M.C.O.P.No.227 of 1996 on the file of Motor Accident Claims Tribunal, Sub Court, Ootacamund.

For Appellant	: Mr.M.L.Ramesh
For R1	: No Appearance
For R2	: No appearance
For R3	: Mr.D.Bhaskaran

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants challenging the portion of the award dated 23.01.2009 made in M.C.O.P.No.227 of 1996 on the file of Motor Accident Claims Tribunal, Sub Court, Ootacamund.

2.The appellants are claimants in M.C.O.P.No.227 of 1996 on the file of Motor Accident Claims Tribunal, Sub Court, Ootacamund. They filed the said claim petition claiming a sum of

Rs.2,00,000/- as compensation for the death of one Sathish, who died in the accident that took place on 09.09.2009. Pending claim petition, the 2nd appellant died.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the 1st respondent and further held that at the time of accident, the 1st respondent did not possess valid driving licence and dismissed the claim petition against the 3rd respondent and directed the respondents 1 & 2 to pay a sum of Rs.1,60,000/- as compensation to the appellants. The respondents 1 & 2 have filed C.M.A.No.1755 of 1999 and this Court by judgment dated 13.08.2008 set aside the award insofar as fixing the liability and remanded the matter for reconsideration only with regard to liability. On remand, the Tribunal by award dated 23.01.2009, held that the 1st respondent was possessing a valid driving licence at the time of the accident and failed to fix the liability on the respondents. Hence, the appellant has filed a review petition. The said review petition was dismissed as time barred and the appellant has come out with the present appeal challenging the portion of the award for not fixing the liability on the part of the 3rd respondent/Insurance Company.

4.The learned counsel appearing for the appellant contended that the respondents 1 & 2 filed an appeal against the earlier award challenging the liability fixed on them. In C.M.A.No.1755 of 1999, this Court by judgment dated 13.08.2008, remanded the matter back, directing the Tribunal to give a finding as to whether the 1st respondent had driving licence at the time of the accident and then to fix the liability. The Tribunal having held that the 1st respondent was possessing driving licence at the time of the accident, failed to fix the liability on the 3rd respondent/Insurance Company. In view of the failure on the part of the Tribunal to fix the liability, the Execution Petition filed by them was rejected. The review petition filed by the appellants for fixing the liability on the Insurance Company was dismissed as time barred. The Tribunal ought to have fixed the liability on the 3rd respondent/Insurance Company, since the respondents 1 & 2 have proved that the 1st respondent had valid driving licence at the time of the accident and prayed for allowing the appeal.

5.The learned counsel for the 3rd respondent/Insurance Company contended that the 3rd respondent examined RW1 to prove that the 1st respondent did not possess driving licence at the time of the accident. Therefore, the 3rd respondent/Insurance Company prayed for ordering pay and recovery.

6. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent/Insurance Company and perused all the materials available on record.

7. From the materials available on record, it is seen that after the order of remand made by this Court, the Tribunal by award dated 23.01.2009, held that the 1st respondent had valid driving licence at the time of accident. Earlier, the claim petition was dismissed as against the 3rd respondent/Insurance Company only on the ground that the 1st respondent did not possess valid driving licence, at the time of accident. Subsequently, when the Tribunal having held that the 1st respondent had a valid driving licence at the time of accident, ought to have fixed the liability on the 3rd respondent/Insurance Company as there is no dispute with regard to Insurance Policy, which was in force at the time of accident. The Tribunal erred in not fixing the liability, after holding that the 1st respondent possessed a valid driving licence. The contention of the learned counsel appearing for the 3rd respondent/Insurance Company seeking for an order of pay and recovery, is without merits. The respondents 1 & 2 and appellant have proved that there was a valid Insurance Policy and driving licence at the time of accident. The 3rd respondent has also not challenged the finding of the Tribunal in the award dated 23.01.2009 that the 1st respondent had no valid driving licence at the time of accident. For the above reasons, I hold that the 3rd respondent/Insurance Company is liable to pay compensation as awarded by the Tribunal to the appellants.

8. In the result, the civil Miscellaneous Appeal is allowed and a sum of Rs.1,60,000/- awarded by the Tribunal as compensation to the appellant, along with interest and costs is confirmed. The 3rd respondent/Insurance Company is directed to deposit the award amount with interest and costs, within a period six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.227 of 1996. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

To

1. The Motor Accident Claims Tribunal
The Subordinate Judge,
Ootacamund.

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

+1 CC to Mr.G. Kumudjabakh, Advocate sr 121.

C.M.A.No.1817 of 2016

NRJK (CO)
SP (18/09/2020)



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