

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.3156 & 3157 of 2013
and
M.P.Nos.1 & 1 of 2013

C.M.A.No.3156 of 2013

The Divisional Manager,
Oriental Insurance Company Ltd.,
No.68, Vallal Pachaiyappan Street,
Kancheepuram - 631501. ... Appellant/2nd Respondent

Vs

1.Yasodha ...1st Respondent/Petitioner
2.T.Dhayalan ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 11.10.2012 in M.C.O.P.No.26 of 2007 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Chengalpattu.

For Appellant : Mr.R.Sivakumar
For Respondents : No appearance
: R2- No appearance

C.M.A.No.3157 of 2013

The Divisional Manager,
Oriental Insurance Company Ltd.,
No.68, Vallal Pachaiyappan Street,
Kancheepuram - 631501. ... Appellant /2nd Respondent

Vs

1.Loganayagi ...1st Respondent/Petitioner
2.T.Dhayalan ... 2nd Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 11.10.2012 in M.C.O.P.No.28 of 2007 on the file of the

Motor Accident Claims Tribunal, Additional Subordinate Judge,
Chengalpattu.

For Appellant : Mr.R.Sivakumar

For Respondents : No appearance
: R2- No appearance

COMMON JUDGMENT

C.M.A.No.3156 of 2013 is filed by the Insurance Company against the award dated 11.10.2012 made in M.C.O.P.No.26 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Chengalpattu.

C.M.A.No.3157 of 2013 is filed by the Insurance Company against the award dated 11.10.2012 made in M.C.O.P.No.28 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Chengalpattu.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

3.The claimants filed M.C.O.P.Nod.26 & 28 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Chengalpattu, claiming a sum of Rs.1,00,000/- & 1,50,000/- as compensation for the injuries sustained by them in the accident that took place on 14.04.2006 and recover the same from the owner of the vehicle.

4.The case of the claimant is that on 14.04.2006 at about 20.30 hours, the claimants were coming from Udhayam Fabrics Company and while they were standing on the mud portion of the left side of the road, a motor cycle belonging to the second respondent bearing Regn.No.TN-21-R-8311 came from Kancheepuram to Chengalpattu and hit against them. Due to the same, both of them fell down and the sustained multiple and grievous injuries all over their bodies.

5.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the vehicle

belonging to the 2nd respondent and directed the appellant/Insurance Company to pay a sum of Rs.10,000/- as compensation in M.C.O.P.No.26 of 2007 and to pay a sum of Rs.45,000/- as compensation to the claimant in M.C.O.P.No.28 of 2007. Against the said award made in M.C.O.P.Nos.26 & 28 of 2007, the second respondent/Insurance Company has come out with C.M.A.Nos.3156 & 3157 of 2013 challenging the liability as well as quantum of compensation.

6.The learned counsel appearing for the Insurance Company contended that the Tribunal erred in granting the sum of Rs.10,000/- and Rs.45,000/- as compensation to the claimants and directed the appellant to pay the compensation amount to the first respondent and recover the same from the second respondent herein. The Tribunal ought to have held that the appellant is not liable to pay any compensation to the claimants, since the Motorcycle bearing Regn.No.TN-21-R-8311 belonging to the second respondent was not at all insured with the appellant on the date of accident. The Claims Tribunal ought to have directed the second respondent to pay the entire compensation amount to the claimants. The Court below erred to note that the appellant examined R.W.2 and proved that the Insurance policy issued in respect of the Motorcycle bearing Regn.No.TN-21-R-8311 covered for the period from 03.01.2005 to 02.01.2006 only and therefore, the policy was not in force on the date of accident i.e., 14.04.2006. The claims Tribunal though held that the Motorcycle bearing Regn.No.TN-21-R-8311 was not having insurance with the second respondent on the date of accident, erroneously directed the appellant to pay the compensation amount and recover the same from the second respondent herein, since the vehicle has been insured after the period of accident i.e., 27.04.2006 to 26.04.2007. The Court below erred to note when there is no insurance policy on the date of accident in respect of the said vehicle, the question of pay and recovery does not arise and prayed for setting aside the award of the Tribunal.

7.Per contra, the learned counsel appearing for the claimants contended that, since in the present case, the accident took place only in the year 2006, awarding a sum of Rs.10,000/- and Rs.45,000/- respectively is very reasonable and hence, there is no need to interfere with the same.

8.Heard the learned counsel appearing for the claimants as well as the Insurance Company and perused the materials available on record.

9.According to the appellant, on the date of accident, the vehicle of the second respondent was not insured with the appellant herein. Hence, when such a plea was raised by the

appellant in the evidence, it is the duty of the claimants and the owner of the vehicle to prove that as on the date of accident, the offending vehicle was insured with the appellant herein. On the contrary, either the claimants or the owner of the vehicle have not proved that the vehicle of the second respondent was insured with the appellant at the time of accident. The appellant has clearly stated that after the expiry of period of insurance on 02.01.2006, the second respondent has failed to insure the vehicle and later, the second respondent has insured his vehicle only from 27.04.2006 to 26.04.2007. It is made clear that the vehicle of the second respondent was not insured with the appellant/insurance company. The owner of the vehicle was examined as RW1 and he has not spoken about the insurance of his vehicle at the time of accident. Hence, this Court finds that the second respondent's vehicle bearing Regn.No.TN-21-R-8311 was not having insurance with any Insurance Company and therefore, the appellant is not liable for the accident committed by the second respondent.

10. In such circumstances, this Court finds that the appellant/insurance company is not liable to pay the compensation to the claimant and the Award passed by the Tribunal in M.C.O.P.No.26 & 28 of 2007, dated 11.10.2012 is liable to be set aside in respect of the liability of the appellant / Insurance Company alone. Therefore, the appellant / Insurance is exonerated from paying compensation to the claimants.

11. Accordingly, the Civil Miscellaneous Appeals are allowed. The quantum of compensation awarded by the Tribunal is hereby confirmed. The owner of the motor cycle bearing Regn.No.TN-21-R-8311 is directed to deposit the award amount determined by the Tribunal along with interest and costs, to the credit of M.C.O.P.Nos.26 and 28 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Chengalpattu within a period of six months from the date of receipt of a copy of this Judgment. On such deposit, the claimants in M.C.O.P.Nos.26 and 28 of 2007 are permitted to withdraw the award amount along with interest and costs. No costs. Consequently, the connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sbn
To

The Motor Accidents Claims Tribunal,
Additional Subordinate Judge,
Chengalpattu.

+1cc to M/s.R.Sivakumar, Advocate Sr.15978, 15979

C.M.A.Nos.3156 & 3157 of 2013
and
M.P.Nos.1 & 1 of 2013

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srg 28/04/2021



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