IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.257 OF 2018

The Oriental Insurance Co.Ltd.,
R.V.K.Buildings, 1st Floor,
Thali Road, Udumalpet
... Appellant/3rd Respondent

Vs.

1.Manonmani
2.Shanthi
3.Sujatha
4.T.Kanakaraj
5.Dhandapani ... Respondents/Petitioners 1 to 3 and RR1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.12.2006 made in M.C.O.P.No.36 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Coimbatore.

For Appellant : M/s.S.Dhivya

For Mr.M.Rajasekhar
For R1 to R3 : Mr.Ma.P.Thangavel

For R4 & R5 : No appearance.

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant-Insurance Company challenging the award dated 19.12.2006 made in M.C.O.P.No.36 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Coimbatore.

2.The appellant/Insurance Company is the 3rd respondent in M.C.O.P.No.36 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Coimbatore. The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of one

Ramachandran, who died in the accident that took place on 20.12.2004.

3.According to the respondents 1 to 3, on 20.12.2004 at about 11.30 p.m while the deceased was returning home by riding his bicycle on Coimbatore-Mettupalayam Main road near Lala Sweets, Koundampalayam, the driver of the Toyoto van drove the same in a rash and negligent manner and dashed against the deceased and caused the accident. In the accident the said Ramachandran sustained severe head injuries and was semi-conscious. Immediately, the said Ramachandran was taken to V.G.Hospital, given treatment in Intensive Care Unit from 20.12.2004 to 24.12.2004. Thereafter, he was shifted to Coimbatore Medical College Hospital. But, the said Ramachandran succumbed to injuries on the way to hospital. At the time of accident, the deceased was aged 65 years and was an employee at Team United Couriers, Nehru Stadium, Coimbatore and was earning a sum of Rs.3,000/- per month. Therefore, the respondents 1 to 3 being the wife and daughters of the deceased filed the above said claim petition claiming a sum of Rs.5,00,000/- as compensation against the respondents 4 and 5 and appellant-Insurance Company, being the driver, owner and insurer of the Toyoto van respectively.

4.The respondents 4 and 5 being the driver and owner of the Toyoto van filed the counter statement denying various statements made by the respondents 1 to 3. According to the respondents 4 and 5, the accident has not occurred due to rash and negligent driving by the driver of the Toyoto van, the 4th respondent herein. The respondents 1 to 3 have falsely impleaded the said Toyoto van belonging to the 5th respondent in the accident. At the time of accident, the 5th respondent's Toyoto van was insured with the appellant-Insurance Company. Therefore, only the appellant-Insurance Company is liable to pay compensation to the respondents 1 to 3 and the respondents 4 & 5 are not liable to pay any compensation to the respondents 1 to 3. The respondents 1 to 3 have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 to 3 under different heads are highly excessive and prayed for dismissal of the claim petition.

5.The appellant-Insurance Company being the insurer of the Toyoto van belonging to the 5th respondent filed counter statement and denied various averments made by the respondents 1 to 3. According to the appellant-Insurance Company, on the date of accident, i.e., on 20.12.2004, the Toyoto van belonging to the 5th respondent was not insured with the appellant-Insurance

Company. According to the Insurance policy No.413804/2004/3472, the said vehicle was insured for the period from 20.12.2003 to 19.12.2004. Later the policy was renewed by the 5th respondent, for the said vehicle after a period of 9 days i.e., from 29.12.2004 to 28.12.2005 under policy No.413804/2005/3475. Therefore, on the date of accident i.e., on 20.12.2004, the said Toyoto van was not insured with the appellant-Insurance Company. The respondents 1 to 3 have to prove that the accident has occurred only due to rash and negligent driving by the driver of the Toyoto van belonging to the 5th respondent. The driver of the Toyoto van belonging to the 5th respondent was not responsible for the accident. According to the appellant-Insurance Company, the said Ramachandran who was riding his bicycle, slipped over the sand on the left side of the road while he was riding his bicycle, sustained injuries on his head and succumbed to injuries. The 1st respondent in column No.7 of FIR, has stated that an unidentified two wheeler has caused the accident. However, the charge sheet has been laid against the 5th respondent's vehicle. Therefore, there is a contradiction between the complaint given by the 1st respondent and charge sheet filed by the police. The accident occurred on 20.12.2004, but the police complaint was lodged only after 4 days from the date of accident. The police colluded with the respondents 1 to 3 and impleaded the said Toyoto van, which is an unconnected vehicle to the accident, only for the purpose of claiming compensation from the appellant-Insurance Company. Therefore, the appellant-Insurance Company is not liable to pay any compensation to the respondents 1 to 3. The respondents 1 to 3 have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 to 3 is highly excessive and prayed for dismissal of the appeal.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Sundarraj, who is the eyewitness to the accident was examined as P.W.2 and seven documents were marked as Exs.P1 to P7. On behalf of the appellant, one Kumar, who is the Divisional Manager of the appellant-Insurance Company was examined as R.W.1 and two documents were marked as Exs.R1 and R2.

7.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the Toyoto van belonging to the 5th respondent and directed the appellant-Insurance Company, being the insurer of the said vehicle to pay a sum of Rs.95,000/- as compensation to the respondents 1 to 3 at the first instance and recover the same from the respondents 4 & 5.

8. Against the said award dated 19.12.2006 made in M.C.O.P.No.36 of 2005, the appellant-Insurance Company has come out with the present appeal.

9. Though notice has been served on the respondents 4 and 5 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

10. Heard learned counsel appearing for the appellant/ Insurance Company as well as the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

11. Though the appellant/Insurance Company has raised various grounds in the grounds of appeal, at the time of arguments, the learned counsel appearing for the appellant/ Insurance Company restricted his arguments only with regard to liability of the appellant and contended that at the time of accident, there was no insurance policy in force for the offending vehicle - DCM Toyota van. The 5th respondent's Toyota van was insured with the appellant for the period from 20.12.2003 to 19.12.2004 by one Thirumalaisamy in policy No.413804/2004/3472. Subsequently, it was renewed from 29.12.2004 to 28.12.2005 vide Policy No.413804/2005/3475. The accident has occurred on 20.12.2004 and on the date of accident, there was no insurance coverage for the offending vehicle. To prove the said contention, the appellant examined one Kumar, who is the Divisional Manager of the appellant/Insurance Company as R.W.1 and marked copies of Insurance policies as Exs.R1 and R2. The Tribunal accepting the oral and documentary evidence held that offending vehicle was not insured on the date of accident and hence appellant is not liable to pay compensation. Having held so, the Tribunal erroneously ordered pay and recovery directing the appellant/Insurance Company to pay the compensation at the first instance and recover the same from the respondents 4 and 5. The said finding is liable to be set aside and is hereby set aside. The 5th respondent, owner of the Toyoto van is liable to pay compensation for negligence caused by the driver of the Toyoto van, 4th respondent herein.

12. In the result, this Civil Miscellaneous Appeal is allowed. The 5th respondent/owner of the Toyoto van is directed to deposit the award amount of Rs.95,000/- together with interest and cost to the credit of M.C.O.P.No.36 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Coimbatore, within a period of eight weeks

from the date of receipt of a copy of this judgment. On such deposit made by the 5th respondent, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the entire amount if any lying in the credit of M.C.O.P.No.36 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Coimbatore, if the entire award amount has already been deposited by the appellant/Insurance Company. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsn

To

1.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Coimbatore,

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

+1cc to Mr.Raja Sekhar, Advocate, S.R.No.16346
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.16774

C.M.A.No.257 of 2018

PA(CO)
CS/29/01/2021