

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2635 of 2014

1.Pushpa

2.Kalaiselvi

3.Saravanan

4.Sankar ... Appellants/Petitioners

Vs.

1.N.Ravi

2.The Oriental Insurance Company Limited,
No.1, Katpadi Road,
Vellore.

3.Suresh Amaladas ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.02.2010 made in M.C.O.P.No.270 of 2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupathur, Vellore District.

For Appellants : Mr.R.Bharath Kumar

For R2 : Mr.K.Vinod
for Ms.Elveera Ravindran

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 10.02.2010 made in M.C.O.P.No.270 of 2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupathur, Vellore District.

3.The appellants are the claimants in M.C.O.P.No.270 of 2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupathur, Vellore District. They filed the said claim

petition, claiming a sum of Rs.3,00,000/- as compensation for the death of one Chinnathamman, who died in the accident that took place on 05.04.2004.

4. According to the appellants, on 05.04.2004 at about 12.30 P.M., while the said Chinnathamman was walking on the extreme left side of the Tirupattur - Vaniyambadi main road, the rider of the motorcycle bearing Registration No. TN 02 Z 7306 who was riding the motorcycle from the opposite direction in a rash and negligent manner, dashed against the said Chinnathamman and caused the accident. In the accident, the said Chinnathamman sustained grievous injuries all over his body and immediately after the accident, he was taken to Government Hospital, Tirupattur. Thereafter he was referred to Bethesda Hospital, Ambur. In spite of treatment, the said Chinnathamman succumbed to injuries on 10.04.2004. Therefore, the appellants filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation against the respondents, being the owner, insurer and rider of the motorcycle respectively.

5. The respondents 1 and 3, owner and rider of the motorcycle respectively remained exparte before the Tribunal.

6. The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellants. The 2nd respondent denied the manner of accident. The appellants have to prove that the rider of the motorcycle belonging to 1st respondent was responsible for the accident. According to the 2nd respondent, the 3rd respondent-rider of the motorcycle was not possessing valid driving license at the time of accident. There is breach of policy conditions and hence, the 2nd respondent is not liable to pay any compensation. The said Chinnathamman sustained only simple injuries in the accident as per the statement given to the Police by him. Therefore, the death was not caused due to the injuries sustained in the accident. The appellants have to prove that the said Chinnathamman died only due to the injuries sustained in the accident. The deceased was responsible for the accident and he contributed negligence to the accident. Hence, the 2nd respondent is not liable to pay any compensation. The appellants have to prove the age, avocation, income, nature of fatal injuries and period of treatment taken by the deceased by producing valid documents. In any event, the quantum of compensation claimed by the appellants are highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st appellant examined herself as P.W.1, one Tamizharasan was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11. On behalf of the 2nd respondent-Insurance Company, one Swamikannu, official from 2nd respondent-Insurance Company was examined as R.W.1 and 10 documents were

marked as Exs.R1 to R10.

8.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to 1st respondent and directed the respondents 1 and 3, being the owner and rider of the motorcycle to pay a sum of Rs.2,71,124/- as compensation to the appellants and dismissed the claim petition as against the 2nd respondent-Insurance Company on the ground that 3rd respondent-rider of the motorcycle was not possessing driving license at the time of accident.

9.Against the said award dated 10.02.2010 made in M.C.O.P.No.270 of 2004 exonerating the 2nd respondent-Insurance Company, the appellants have come out with the present appeal.

10.The learned counsel appearing for the appellants contended that the Tribunal erred in dismissing the claim petition against the 2nd respondent-Insurance Company and fastened the liability only against the respondents 1 and 3. The 2nd respondent did not examine any official from R.T.O. to prove that 3rd respondent did not possess driving license at the time of accident. Fastening the liability on the respondents 1 and 3 alone and exonerating the 2nd respondent-Insurance Company is vexatious, frivolous, unreasonable, unsustainable and contrary to the judgment of the Hon'ble Apex Court. On the date of accident, there was valid insurance policy issued by the 2nd respondent and the Tribunal ought to have ordered pay and recovery and prayed for a direction to the 2nd respondent to pay the compensation and for allowing the appeal.

11.The learned counsel appearing for the 2nd respondent-Insurance Company made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

13.The issue to be decided in the present appeal is whether the Tribunal is right in dismissing the claim petition against the 2nd respondent-Insurance Company.

14.From the materials available on record, it is seen that it is the contention of the 2nd respondent-Insurance Company in the counter statement that 3rd respondent, the rider of the offending vehicle did not possess driving license on the date of

accident. To substantiate this contention, the 2nd respondent has examined R.W.1, their official and marked 10 documents as Exs.R1 to R10. From the materials on record, it is seen that the 2nd respondent has issued Ex.R5/notice to the 1st respondent-owner of the motorcycle, Ex.R7/letter written to 3rd respondent and Ex.R9/notice issued to 3rd respondent to produce the driving license. The 2nd respondent has marked Ex.R6/acknowledgement card for having served the notice on the 1st respondent and Ex.R8 to R10, receipts for having sent Registered Post to 3rd respondent. In spite of such notice issued to the respondents 1 and 3, they have not produced any driving license. The Tribunal considering the evidence of R.W.1 and Exs.R1 to R10, has held that 2nd respondent has proved that 3rd respondent did not possess driving license on the date of accident and dismissed the claim petition against the 2nd respondent. In Ex.P3/Motor Vehicle Inspector report, it has been mentioned that 3rd respondent has not produced the driving license. The Tribunal considering the evidence of R.W.1, Exs.R1 to R10 and Ex.P3/Motor Vehicle Report, held that 2nd respondent has proved that 3rd respondent did not possess driving license on the date of accident and dismissed the claim petition against the 2nd respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

15.The contention of the learned counsel appearing for the appellant that the Tribunal ought to have ordered pay and recovery in the absence of driving license is without merits. The Hon'ble Apex Court in the judgment reported in AIR 2020 SC 4453, [Beli Ram Vs. Rajinder Kumar], held that when the driver/rider of the offending vehicle did not possess driving license, Insurance Company is not liable to pay any compensation. For the above reason, this Civil Miscellaneous Appeal is liable to be dismissed as devoid of merits.

16.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.2,71,124/- awarded by the Tribunal as compensation to the appellants, along with interest and costs is confirmed. The respondents 1 and 3 are directed to deposit the award amount along with interest and costs, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.270 of 2004 on the file of the Motor Accident Claims Tribunal, Sub Court, Tirupathur, Vellore District. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.

This appeal is dismissed as against the 2nd respondent-Insurance Company. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/
Sub Asst. Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Tirupathur,
Vellore District

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to M/s.R.Bharathkumar Advocate sr40132

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