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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.363 of 2014
and M.P. No. 1 of 2014

M/s. United India Insurance Co. Ltd.,
235, Gandhi Market Road,
Arni. ... Appellant/2nd Respondent

Vs.

1.R. Munirathinam

2.M. Devagi ...1st and 2nd Respondents/Claimants

3.R. Shankar

4.M. Babu

5.The New India Assurance Co. Ltd.,
Rep. By its Branch Manager,
No.110, Gandhi Market Road,
Arni. ... 3 to 5 Respondents /Respondents 1,3 & 5

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.10.2012, made in M.C.O.P. No.99 of 2007, on the file of the Motor Accident Claims Tribunal, Arni, Tiruvannamalai District.

For Appellant : Mr. J. Chandran

For Respondents: Mr. P. Satheesh Kumar
(For RR1 & 2)

No appearance (For R4)

Mrs. S.R. Sumathy (For R5)

R3- Exparte



J U D G M E N T

The matter is heard through "Video Conferencing".

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This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 11.10.2012, made in M.C.O.P. No.99 of 2007, on the file of the Motor Accident Claims Tribunal, Arni, Tiruvannamalai District.

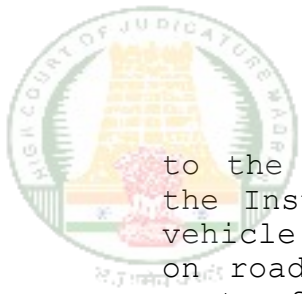
2.The appellant is the 2nd respondent in M.C.O.P. No.99 of 2007, on the file of the Motor Accident Claims Tribunal, Arni, Tiruvannamalai District. The respondents 1 and 2/claimants filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of one Sivalingam who died in the accident that took place on 06.02.2007.

3. According to the respondents 1 and 2, on the date of accident, the deceased was traveling as Loadman in the Tractor-Trailer loaded with mud, bearing Registration Nos.TN-32-2435 and TN-25-V-5861 belonging to the respondents 3 and 4. Due to the rash and negligent driving by the driver of the Tractor-Trailer, the vehicle capsized and the mud fell over the deceased. In the accident, the deceased succumbed to fatal injuries. The accident occurred only due to rash and negligent driving by the driver of the Tractor-Trailer belonging to the respondents 3 and 4. Hence, the respondents 1 and 2 filed the claim petition, claiming compensation against the appellant as insurer of Tractor, respondents 3 & 4 as owners of Tractor-Trailer respectively and 5th respondent as insurer of the Trailer.

4.The 3rd respondent remained exparte before the Tribunal.

5.The appellant-Insurance Company, insurer of the Tractor, filed counter statement and denied all the averments made by the respondents 1 and 2 in the claim petition. According to the appellant, the accident occurred only due to negligence on the part of the deceased and driver of the Tractor-Trailer drove the vehicle slowly and carefully. The respondents 1 and 2 have to prove that driver of the Tractor-Trailer possessed valid driving license to ply the vehicle on road. The respondents also have to prove the age, avocation and income of the deceased to claim compensation. In any event, the total compensation claimed by the respondents 1 and 2 is excessive and prayed for dismissal of the claim petition.

6.The 5th respondent-Insurance Company, insurer of the Trailer, filed counter statement and denied all the averments made by the respondents 1 and 2 in the claim petition. According



to the 5th respondent, the owner of the vehicle did not inform the Insurance Company about the accident and driver of the said vehicle did not possess valid driving license to ply the vehicle on road. The accident occurred only due to negligence on the part of the deceased. The respondents also have to prove the age, avocation and income of the deceased to claim compensation. In any event, the total compensation claimed by the respondents 1 and 2 is excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined himself as P.W.1, examined one eyewitness as P.W.2 and marked 2 documents as Exs.P1 & P2. The appellant examined two witnesses as R.W.1 and R.W.2 and marked 3 documents as Exs.R1 to R3.

8. 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 Tractor-Trailer belonging to the respondents 3 and 4 and directed the appellant as well as the respondents 3 and 4 to jointly and severally pay a sum of Rs.4,35,000/- as compensation to the respondents 1 and 2. The Tribunal dismissed the claim petition as against 5th respondent.

9. Against the said award of the Tribunal dated 11.10.2012, made in M.C.O.P. No.99 of 2007, the appellant - Insurance Company has come out with the present appeal.

10. The learned counsel appearing for the appellant-Insurance Company contended that the accident occurred only due to negligence on the part of the deceased. The driver of the Tractor was not responsible for the accident. The deceased traveled only in the Trailer which was insured with the 5th respondent and hence, the Tribunal ought to have held that insurer of Trailer alone is liable to pay compensation. The appellant examined R.W.1, their Administrative Officer to prove that driver of the Tractor did not possess Driving License at the time of accident. The Tribunal also failed to consider that deceased traveled in the Trailer and died when the Trailer capsized. At the time of accident, the Tractor did not capsize. The Tribunal without fixing negligence proportionately on the part of the driver of the Tractor and Trailer, ought to have held that both the owners are liable to pay compensation. The award of the Tribunal viz., Rs.4,35,000/- payable by the appellant and respondents 3 and 4 is not correct and prayed for setting aside the award of the Tribunal.

11. Though counsel entered appearance on behalf of 4th respondent, when the matter is taken up for hearing, there is no



representation for the 4th respondent either in person or through counsel.

12. Heard the learned counsel appearing for the appellant, respondents 1 and 2 as well as 5th respondent and perused the materials available on record.

13. From the materials on record, it is seen that 3rd respondent is owner of the Tractor and 4th respondent is owner of the Trailer. On the date of accident, the deceased loaded mud in the Trailer for agricultural purpose and was traveling to the field, sitting on the Trailer. The driver of the Tractor drove the Tractor in a rash and negligent manner and due to that, the Tractor and Trailer capsized. The deceased fell down from the Trailer and mud fell on the deceased and he died. To substantiate this contention, the 1st respondent examined himself as P.W.1 and examined one Jambulingam as P.W.2 and marked FIR as Ex.P1, which was registered against the driver of the Tractor. According to the respondents 1 and 2, the Tractor was insured with appellant and Trailer was insured with the 5th respondent. The appellant contended that driver of the Tractor did not possess Driving License. In the accident, the Tractor did not capsize and only Trailer capsized and accident has only occurred when the Trailer capsized and the deceased died as the mud from the Trailer fell on the deceased. The Trailer was insured with the 5th respondent and 5th respondent alone is liable to pay compensation. On the other hand, it is the contention of the 5th respondent that accident has occurred only due to rash and negligent driving by the driver of the Tractor. The Tractor was insured with the appellant. The Trailer was not insured with the 5th respondent. The Insurance Policy mentioned by the respondents 1 and 2 issued by the 5th respondent does not relate to the Tractor, but it relates to some other vehicle. The appellant examined R.W.1, who is an Administrative Officer. The appellant has not examined either driver of the Tractor or any eye-witness to prove their case that Tractor did not capsize and only Trailer got capsized. Further, the appellant has not examined any Official from R.T.O. to prove that driver of the Tractor did not possess Driving License at the time of accident. The appellant also has not issued any notice or letter to the 3rd respondent or to the driver of the Tractor to produce the Driving License. The 5th respondent examined R.W.2 who is their Administrative Officer and proved that Trailer was not insured with the 5th respondent. Considering the above materials, the Tribunal has held that 5th respondent-Insurance Company is not liable to pay compensation and dismissed the claim petition against the 5th respondent. The finding of the Tribunal that accident occurred only due to rash and negligent driving by the driver of the Tractor does not suffer any error or infirmity, warranting interference by this Court. The Tribunal has fixed



liability on the appellants and respondents 3 and 4, but has not apportioned the liability. The appellant is insurer of the Tractor belonging to the 3rd respondent. For the negligent driving by the driver of the 3rd respondent, the appellant is liable to pay compensation. The Trailer was attached to the Tractor which caused accident. The Trailer can move only when it is attached to the Tractor or any other vehicle. In the present case, the Trailer belonging to the 4th respondent was attached to the Tractor belonging to the 3rd respondent. The driver of the Tractor was responsible for the accident. In view of the same, there is no error in the award of the Tribunal directing the appellant as well as the respondents 3 and 4 to pay compensation to the respondents 1 and 2.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.4,35,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant as well as the respondents 3 and 4, are jointly and severally directed to deposit the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.99 of 2007. On such deposit, the respondents 1 and 2 are permitted to withdraw the award amount, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa
To

The Motor Accident Claims Tribunal,
Arni, Tiruvannamalai District.

Copy to

The Section Officer,
V.R Section,
High Court, Madras.

+lcc to Mr.J.Chandran, Advocate Sr.42328

C.M.A. No.363 of 2014

ssi[co]
srg 31/08/2021