



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 10.12.2020

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)Nos.1207 and 1208 of 2008

C.M.A(MD)No.1207 of 2008

The Divisional Manager,
New India Assurance Co., Ltd.,
Neyveli - 1.

.. Appellant/2nd Respondent

vs.

1.Annapushpam
2.Arumugam
3.Subbulakshmi
4.Sakthivel
5.Ramanathan
6.S.Kandammal

..1 to 5 Respondents/Claimants
...6 Respondent/1 Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 05.10.2007 made in MCOP No.246 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Ramanathapuram.

For Appellant : Mr.J.S.Murali
For Respondents : Mr.V.Raghavachari (for R1 to R5)
No appearance for R6

C.M.A(MD)No.1208 of 2008

The Divisional Manager,
New India Assurance Co., Ltd.,
Neyveli - 1.

.. Appellant/2nd Respondent

vs.

1.Ilangovan
2.S.Kandammal

..1 Respondent/Claimant
..2nd Respondent/1 Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 05.10.2007 made in MCOP No.247 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Ramanathapuram.

For Appellant : Mr.J.S.Murali



For Respondents : Mr.V.Raghavachari (for R1)
No appearance for R2

COMMON JUDGMENT

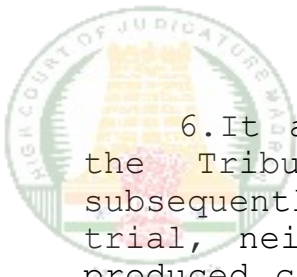
These appeals have been preferred by the Insurance Company challenging their liability to pay compensation to the award passed in MCOP Nos.246 and 247 of 2005, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Ramanathapuram, dated 05.10.2007.

2.MCOP No.246 of 2005 was filed by the legal heirs of the deceased Seranthaiyan while MCOP No.247 of 2005 was filed by the injured Ilangovan seeking compensation. It is their case that the deceased Seranthaiyan was riding Bajaj Motorcycle bearing registration No.TN-65-G-1103 on 07.07.2002 and the injured was a pillion rider and at about 1.30 p.m, when they were near Travellers Bungalow in Madurai - Mandapam main road, the rider of the Yamaha motorcycle bearing registration No.TN-65-A-7088 came from the opposite direction and dashed against the Bajaj motorcycle. In the course of which, both sustained grievous and multiple injuries and the said Seranthaiyan died on the spot and the pillion rider Ilangovan was taken to the Government Hospital, Ramnad and was admitted as inpatient. After discharge from the hospital, he took treatment in a private clinic.

3.It was contended that the appellant was the insurer of the Yamaha motorcycle and hence, owner as well as the insurer are liable to pay compensation. In the objection statement filed by the appellant, the entire averments were disputed and denied. It is specifically contended that the rider of the motorcycle did not have valid driving licence.

4.In the counter affidavit filed by the first respondent, it is stated that the driver of the motorcycle drove it in N.H.45 road on moderate speed as per rules, but the deceased Seranthaiyan was riding the motorcycle bearing registration No.TN-65-G-1103 in a rash and negligent manner and dashed against the Yamaha motorcycle. It is also stated that the said Yamaha motorcycle was gifted to the first respondent in the event of her son's marriage and due to break down of matrimonial relationship, the vehicle was returned to one Veerachamy of Ramanathapuram on 04.04.2002 and hence, the first respondent is not liable to pay compensation.

5.Heard Mr.J.S.Murali, learned counsel for the appellant Insurance Company and Mr.V.Ragavachari, learned counsel for the respondents/claimants. No representation for the respondents 2 and 6/owner of the offending vehicle. The owner, who appeared before the Tribunal, failed to contest the proceedings, hence, he was set exparte. Hence, notice in this appeal is not necessary in view of the Order 41 Rule 14(4).



6.It appears that though the first respondent appeared before the Tribunal through a counsel and filed a counter, but subsequently, he did not take part in the proceedings. During the trial, neither claimants nor owner of the Yamaha motorcycle have produced copy of the insurance policy to show that the vehicle was insured with the appellant insurance company. On behalf of the appellant, one Karuppiyah gave evidence as R.W.1 and also produced premium and policy details (Ex.B.1). The evidence of R.W.1 and Ex.B1 would reveal that the vehicle involved in the accident was not insured with the appellant insurance company. The appellant has stated that they have not received any intimation from the owner about the involvement of the said vehicle in the alleged accident.

7. It is to be noted that the owner who appeared before the Tribunal, failed to produce the copy of the insurance policy and give details of policy number and period of coverage. In the light of the above facts, this Court is of the opinion that the appellant have discharged their burden of proof to show that on the date of accident, the offending vehicle was not insured with the appellant Insurance Company. The Tribunal overlooking the stand taken by the appellant in the counter and the evidence adduced on their behalf, fastened liability on the insurance company. It is well settled that if there is no insurance coverage, the Court has no other option except exonerating the Insurance Company to satisfy the award amount. The quantum fixed by the tribunal is confirmed.

8. For the foregoing reasons, the appeal is allowed and the liability fixed on the appellant is set aside. It is needless to note that the claimants are entitled to recover the amount from the owner of the vehicle.

9.The learned counsel for the appellant would submit that the entire award amount with interest has been deposited to the credit of the claim petition and the claimants are not permitted to withdraw the same. Hence, the Tribunal is directed to refund the amount lying to the credit of the claim petition to the appellant.

10.Accordingly, both the appeals are allowed. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Motor Accident Claims Tribunal,
Additional District Judge,
Fast Track Court, Ramanathapuram.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2C)

C.M.A(MD)Nos.1207 and 1208 of 2008

10.12.2020

SVN(CO)

KK(05.03.2021) 4P 4C