IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

CMA No. 519 of 2012

National Insurance Company Ltd.,
Chennai ...Appellant / 2nd Respondent

..vs..

1. R.Lakshmi
W/o. D.Ratnam. ...1st Respondent / Petitioner

2. K.Sampathkumar
S/o. Kirubakaran ...2nd Respondent / 1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.03.2003 made in M.C.O.P.No.2259 of 1998, on the file of the VI Judge, Court of Small Causes, The Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : Not Ready Notice

J U D G M E N T

“This matter is heard through Video Conferencing”

Dissatisfied with the judgment and decree, dated 24.03.2003, passed by the tribunal, fastening the liablity on the Insurance Company, the appellant/Insurance Company is before this Court to set aside the judgment and decree by the tribunal.

2. It is the case of the claimant/1st respondent herein that on 04.04.1998 at about 13.30 hrs, while the deceased D.Ratnam crossing the Ezhil Nagar Manali Road, at that time the driver of Tanker Lorry bearing Reg. No. TCF-1213, owned by the 2nd respondent herein came in a very rash and negligent manner and dashed against the deceased, resulting the deceased D.Ratnam died on the spot. The wife of the deceased /1st respondent herein has filed the claim petition for a sum of Rs.3,00,000/- as compensation for the death of the deceased.

3. The tribunal after analyzing both oral and documentary evidences, has fixed the negligence on the driver of the 2nd

respondent 's vehicle and being the insurer of the vehicle, directed the appellant herein to pay a sum of Rs.2,25,000/- as compensation along with interest at the rate of 9% p.a from the date of petition till realization.

4. The learned counsel appearing for the appellant/Insurance Company has submitted that the tribunal erred in holding the appellant is liable to pay the compensation inspite of the fact that there was no valid and effective contract of insurance on the date of accident. The learned counsel for the appellant further submitted that the tribunal has not considered the fact that Ex.R4/Fresh Policy was taken by the 2nd respondent /owner of the vehicle for the period from 06.04.1998 to 05.04.1999, but the accident had occurred only on 04.04.1998. The learned counsel for the appellant further submitted that the tribunal has not considered the evidence of RW1 and Ex.R1 to R5, which drawn adverse inference against the 2nd respondent/owner of the vehicle , held that the appellant is liable to pay the compensation. Hence prayed to seaside the liability fastened on the appellant.

5. Heard the learned counsel appearing for the appellant/insurance company and perused the materials available on record. Notice unserved to both the respondents.

6. With regard to the contention of the learned counsel appearing for the appellant/insurance company that the liability fastened as against them is contrary to law, it is seen that the appellant/insurance company has placed all the documentary evidence before the tribunal and the tribunal after analyzing the documents and evidence, has observed that on the date of accident i.e on 04.04.1998, there was no policy taken by the owner of the vehicle. Since his cheque for payment of policy expired, the policy was not effected on the said date. Subsequently, the fresh policy/Ex.R4 was taken from 06.04.1998 to 05.04.1999, therefore it is clear that as on date of the accident , there was no policy coverage for the offending vehicle. Therefore, the insurance company cannot be made liable to pay the compensation.

7. It is also not in dispute that as per FIR/Ex.P4 and the evidence of PW2 & PW3, the accident had occurred only due to the rash and negligence on part of the driver of the tanker lorry and in the absence of effective driving license on the date of the accident, the 2nd respondent herein being the owner of the vehicle alone be made liable to pay the compensation.

8. From a perusal of records, it is seen that the notice was ordered by this Court and the learned counsel for the appellant/Insurance Company has taken efforts to serve notice to the respondents, but the same was returned with endorsement in

respect of R1 as 'No such person' and in respect of R2 as 'No sufficient address'. Thereafter, the appellant/insurance company was not in a position to serve notice to the respondents.

9. In view of the fact that the appeal is of the year 2003 and taken on file only in the year 2021 i.e nearly after a delay of 18 years and also taking note of the fact that the learned counsel for the appellant/insurance company is not in a position to effect the service to the respondents despite opportunities granted, this Court is of the view that the appeal deserves to be dismissed.

10. In the result, the appeal is dismissed. No costs. However, considering the facts and circumstances of the case and in view of the discussions made above, liberty is granted to the appellant/insurance company to proceed as against the 2nd respondent/owner of the vehicle to recover the compensation amount in the manner know to law.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

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To

1.The VI Judge,
Court of Small Causes,
(The Motor Accidents Claims Tribunal,)
Chennai.

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

+1cc to Mr.S.Arunkumar, Advocate SR.No.5765

CMA.No.519 of 2012

EV(CO)
RVM(15/09/2021)