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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 24.03.2021

Judgment Delivered on : 27.04.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2005 of 2014

The New India Assurance Co. Ltd.,
91/106, Big Street, First Floor,
Tiruvannamalai

... Appellant/2nd Respondent

Vs.

1. Saminathan S/o. Muthu

2. Nirmala W/o. Saminathan

3. Soman S/o. Narayanan

... Respondents 1 to 3/
Petitioners 1 & 2/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.101 of 2012 dated 28.10.2013 on the file of the Motor Accidents Claims Tribunal, Tindivanam.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : No Appearance.

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 28.10.2013 passed in MCOP.No.101 of 2012 by the Motor Accidents Claims Tribunal, Tindivanam.

2. The brief facts regarding the claim petition which are relevant to the appeal are as follows:

On 05.01.2012 at about 18.00 hours, Binu was driving the first respondent vehicle bearing Registration No. TN-31-AB-1818 came from Keezharungunam to Nallalam Cross Road and at that time sudden cross of a bullock, the said Binu applied sudden brake and fell down from the vehicle, as a result of which, he



sustained multiple injuries all over the body, on the way to hospital he died.

3. After due enquiry, based on the assessment of evidence before the Tribunal, the Tribunal had passed the award for a sum of Rs.4,89,800/- as compensation.

4. Aggrieved by the award passed by the Tribunal, the second respondent/Insurance Company had filed this appeal seeking to set aside the award.

5. The learned counsel appearing for the appellant/Insurance Company submitted his arguments. As per his submission, the case of the claimant is that, he had driven the two wheeler belonging to his owner. He claims to be the Manager of the owner of the vehicle. While riding the two wheeler, he met with an accident and suffered injury. As per the insurance policy, the owner or driver of the two wheeler alone is entitled to claim compensation. The Manager would not be covered by the policy of insurance. While so, the learned Tribunal had ignored the said policy conditions and mechanically awarded compensation fixing the liability on the Insurance Company. Therefore, for violation of policy conditions and fixing the liability on the Insurance Company the insurer as appellant had filed this appeal, seeking to set aside the award passed by the Tribunal.

6. The learned counsel for the appellant had argued on 11.03.2021. Therefore, the case was posted for hearing the other side, and it was informed to the learned counsel who appeared and argued to convey it to the respondent's side and the case was adjourned repeatedly dated 11.03.2021 and 24.03.2021.

7. Instead of sufficient opportunities, the learned counsel for the respondent did not appear either in virtual mode or physically. Therefore, the appeal was posted and reserved for judgments, directing the party concerned who had not advanced his arguments to furnish the written argument through E-mail or Chat Box.

8. In spite of the same, written submissions were also not furnished. Therefore, this Court perused the records and the appeal is disposed of accordingly as below.

9. Points for consideration

Whether the award passed by the Tribunal is to be set aside?

10. Perused the claim petition filed by the respondents/claimants before the Motor Accident Claims Tribunal in MCOP.No.101/2012, the counter filed by the



appellant/Insurance Company, the Judgment/Order passed by the Motor Accident Claims Tribunal and the Memorandum of appeal filed in this appeal.

11. On perusal of the award passed by the Tribunal and the reported rulings of the Hon'ble Supreme Court in 2009 ACJ 998 (New India Assurance Company Vs. Sadanand Mukhi and others) it is found that the accident was caused by the rider of the two wheeler himself and hence, the personal coverage of the policy of insurance does not cover. If the rider is the owner of the two wheeler and had paid the subscription for the personal coverage, only in such cases, the owner cum driver is entitled to claim compensation that too in case of two wheeler maximum Rs.50,000/- and for four wheeler maximum Rs.1,00,000/- alone is granted. Here in this case, the rider claims to be the manager of the owner of the vehicle. Under the Workmen Compensation Act, the rider of the two wheeler if he is impleaded as driver of the car or rider of the two wheeler by the owner of the two wheeler, then he is also covered. Here there is no such relationship as employee or employer. Therefore, the award passed by the Tribunal is against the evidence let in by the witness for the Insurance Company R.W.1 and Ex.R1, Policy of the Insurance.

12. The reasons stated by the learned counsel for the appellant/Insurance Company is found acceptable.

13. Therefore, the point for consideration is answered in favour of the appellant/Insurance Company and against the respondents/claimants. The award passed by the Tribunal in MCOP No. 101 of 2012 on the file of the Motor Accidents Claims Tribunal, Tindivanam is set aside.

14. In the result, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Deputy Registrar(AD-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Tindivanam.



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

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CB (20/10/2021)

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