IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.971 of 2003
and
CMP.No.12465 of 2003

United India Insurance Co. Ltd.,
T.B Road, Palakad,
Kerala State. ... Appellant

..Vs..

1. K. Natarajan
2.Rajammal
3.Joshi
4.Soundararajan
5.Vijai Raj Kothari Finance,
No.4, Ramanan Road, 1st Floor,
Sowcarpet, Chennai 600 079.

6.S.Mani

7.New India Assurance Co., Ltd.,
200 C, Dr.Nanjappa Road,
Coimbatore. ... Respondents

(Respondents 3 & 6 were set exparte before the lower court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 06.08.2001 made in MCOP.No.379 of 1996 on the file of the Motor Accidents Claims

Tribunal, II Additional Sub-Court, Coimbatore.

For Appellant : Mr.E.Rajadurai
for Mr.N. Vijayaraghavan

For Respondents : Mrs.R. Sreevidya for R7
No appearance for R1, R2 & R5

JUDGMENT

This appeal has been filed by the appellant/Insurance Company seeking to set aside the impugned award dated 06.08.2001 passed by the Motor Accident Claims Tribunal, II Additional Sub-Court, Coimbatore, in MCOP.No.379 of 1996.

2. The case of the appellant, in brief, is as follows:

On 06.02.1996 at 7.00 p.m., when the deceased was driving the auto at night shift, at 12.40 a.m., from East to Variety Hall road, proceeding on the western side of NH Road junction, the third respondent drove the lorry bearing Regn.No.KL9/2949 on the south to north direction in a rash and negligent manner and hit the said auto rickshaw. Due to the sudden hit of the lorry, the auto fell down and the deceased sustained fatal injuries on fore arm, head and left leg and thigh bone and the blood were bleeding and thereafter, he died in the hospital. Claiming compensation of Rs.7,50,000/, the claimants filed a claim petition in M.C.O.P.No.379 of 1996 before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,82,000/- with interest at the rate of 9% per annum from the date of the petition till the date of deposit payable by the respondents 3 to 5 and appellant to the claimants/respondents 1 and 2. Questioning the liability fixed on the appellant/Insurance Company, the present appeal came to be filed.

3. The Appellant / Insurance Company, unsatisfied with the liability fastened on them under the impugned award, has preferred this appeal seeking to set aside the award of the Tribunal.

4. The learned counsel for the appellant has submitted that the judgment and decree of the Tribunal is contrary to law, weight of evidence and probabilities of the case. It has grossly erred in fastening the liability on the appellant in a case where the vehicle involved in the accident was not insured with them on the date of accident. It ought to have seen that the burden to prove valid insurance for the vehicle on the date of accident was

on the claimants vide decisions in 1986 ACJ 807, 1987 ACJ 541, 2000 ACJ 1517, CMA.No.1389 of 1993, etc., and the claimants having failed to do so, the appellant ought to have been exonerated. He further submitted that the vehicle had infact found to be insured with the Divisional Office No.1, D.B.Road, R.S.Puram, Coimbatore 641002 vide premium receipt No.497644 dated 23.01.1996 and hence the appellant ought to be exonerated.

5. The learned counsel for the 7th respondent has submitted that the Tribunal has rightly considered the materials and evidences and has awarded the just and fair compensation and also rightly fixed the liability on the Insurance Company and hence, the same does not require any interference in the hands of this Court. Hence, she prays for dismissal of the Appeal.

6. Heard the learned counsel for the appellant and the learned counsel for the 7th respondent and perused the materials available on record carefully and meticulously.

7. Now the question to be decided is only with regard to the liability fixed on the part of the appellant / Insurance Company by the Tribunal.

8. A perusal of counter filed by the appellant would reveal that the accident occurred due to the rash and negligent driving of the driver of the auto. It is seen that the claimants have not furnished any details to prove that the vehicle involved in the accident was insured with the appellant on the date of accident. It is also seen that the driver of the lorry has not denied the allegation laid on him. But he has paid the fine amount conceding the offence, which is seen from Ex.P.7. The driver of the lorry is the cause for the accident and the same has been corroborated with the evidence of Ex.P4/ Rough sketch. It is also seen that the claimants have not submitted any particulars of the policy insured with the appellant.

9. In support of their contention, the appellant has relied on the following decisions:

(i) The Oriental Insurance Co.Ltd., Vs. R. Mahendran and

Others – CMA.No.2484 of 2010 dated 14.09.2016 (MANU/TN/3221/2016) in which it is held that unless the policy details are furnished to the insurer by the claimant, it is impossible for the insurer to produce the policy before the Tribunal. Before saddling the Insurance Company with the liability, initial burden lies upon the claimant to show that the vehicle was insured with the particular Insurance Company and the same cannot be faulted for non- production of the policy.

(ii) The Branch Manager, The Oriental Insurance Co. Ltd., Thiruvarur Town and Munsif Vs. Karthikesan and others - CMA.No.893 of 2002 dated 21.07.2007- 2007 (2) TN Mac 188, in which, it has been stated that before the Tribunal, no steps were taken by the claimant to establish that the tractor was duly covered with the appellant / Insurance Company. It is also held that when the claimant has failed to establish that the Insurance Policy was in force at the time of accident, no liability could be fixed upon the Insurance Company and the owner of the vehicle should be held liable.

10. Placing reliance on the above citations, this court is of the opinion that the owner of the lorry has to pay the compensation to the claimants and

hence the appellant / Insurance Company is exonerated from the liability. Therefore, this Court is inclined to modify the finding of the Tribunal in respect of liability alone. Except the same, there is no modification with regard to the quantum of compensation awarded by the Tribunal.

11. In the result,

(i) This Appeal is allowed. Consequently, connected miscellaneous petition is closed. No costs.

(ii) The appellant/Insurance Company is permitted to withdraw the amount deposited by them before the Tribunal.

(iii) The 4th respondent/owner of the vehicle is directed to deposit the Award amount together with interest and costs from the date of claim till the date of deposit as assessed by the Tribunal, to the credit of MCOP.No.379 of 1996, within a period of six weeks from the date of receipt of a copy of this Judgment.

A.A.NAKKIRAN, J.
gv

(iv) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the claimants through RTGS within a period of two weeks thereafter.

13.06.2023

Index:Yes/No
Internet:Yes/No

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To

1.The Motor Accidents Claims Tribunal
II Additional Sub-Court, Coimbatore.

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

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