IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.815 of 2018

1. Annamalai

2. Rajeswari ... Appellants

Vs.

1. Madurai Muthu

2. HDFC Ergo General Insurance Company Limited,
Raheja Towers,
No.177, Anna Salai,
Chennai -2. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 against the judgment and decree dated 09.08.2017 made in M.A.C.T.O.P.No.1368 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court at Chennai.

For Appellant : M/s.M.Malar

For R1 : Substituted service
(Paper publication filed)
No appearance

For R2 : M/s.M.Somasundaar

J U D G E M E N T

This Civil Miscellaneous Appeal has been filed against the Award dated 09.08.2017 passed in M.A.C.T.O.P.No.1368 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court at Chennai.

2. The brief facts of the case are as follows:

On 17.05.2012 at about 19.00 hours, while the deceased was walking on the left side of Chennai to Trichy National Highway, near V.Chinnakuppam Bus Stop, a car bearing registration No.TN-09-BA-8191 came from Villupuram towards Ulundurpet in a rash and negligent manner, dashed against her, due to which, she sustained fatal injuries.

3. The claimants are parents of the deceased and they filed the claim petition in M.A.C.T.O.P.No.1368 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judge, Small Causes Court at Chennai. First respondent is the owner of the offending vehicle and the second respondent is the insurer of the said vehicle.

4. Learned counsel for the appellants/claimants submitted that the first respondent's vehicle was insured with the second respondent/Insurance Company. Premium was paid by the first respondent to the second respondent/Insurance Company by way of cheque and the same got dishonoured. Hence the Tribunal held that there was no policy coverage for the offending vehicle at the time of accident. If the cheque issued by the first respondent to the second respondent/Insurance company is dishonoured, the second respondent Insurance company has to file a case under Section 138 of Negotiable Instruments Act as against the first respondent and recover the premium. The deceased was a third party to the contract between the first respondent and second respondent/Insurance company. The payment of premium and dishonour of cheque are "lis" between the insurer and the insured and the same will not bind the third party. The Tribunal has failed to consider the same and fixed the liability on the owner of the vehicle who is the first respondent herein and directed the first respondent to pay compensation which warrants interference. The Tribunal failed to consider the income of the deceased and fixed the

notional income of the deceased as Rs.15,000/- without considering the present cost of living. Hence, he prayed for enhancement of compensation.

5. The first respondent remained ex-parte before the Tribunal.

6. Learned Counsel for the second respondent/Insurance Company submitted that the policy issued by the second respondent was cancelled, as the cheque issued by the first respondent got dishonoured, due to insufficient finds. There is no privity of contract between the first respondent/owner of the vehicle and the second respondent/Insurance Company. Further, driver of the first respondent vehicle was not having valid and effective driving licence at the time of accident. Hence, the second respondent/Insurance Company is not liable to indemnify the first respondent for the loss arising out of the accident. The Tribunal has also rightly appreciated the evidence and found that, at the time of accident, there was no insurance coverage policy with the second respondent/Insurance company. Hence, the Tribunal exonerated the

second respondent/Insurance company and dismissed claim petition as against the second respondent/Insurance Company and rightly directed the first respondent/owner of the vehicle to pay the compensation to the claimants. Hence, there is no merit in the appeal and the same is liable to be dismissed.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. The manner of accident is not in dispute. Since premium paid by the first respondent by way of cheque, got dishonoured due to insufficient funds, the second respondent/Insurance company cancelled the insurance coverage policy on the first respondent, who is the owner of the vehicle. Hence, there is no privity of contract between both the respondents, unless the claimants have proved that at the time of accident, the policy was in force. It is clear from the evidence of R.W.1, who is the Manager of the Insurance Company, Ex.R1- memo for dishonour of cheque and Ex.R1- copy of the letter to the first respondent

that the Insurance company cancelled the policy issued by them due to dishonour of cheque. The accident had taken place on 17.05.2012. There are no materials to show that on the date of accident, the policy was in force. The cheque got dishonoured and returned on 22.12.2011. Intimation letter about the cancellation of Insurance Policy for want of premium, was issued to the first respondent on 27.12.2011. The accident took place on 17.05.2012. Hence, on the date of accident, there was no insurance coverage for the offending vehicle.

9. Therefore, under the above facts and circumstances, this Court being the appellate court, is a final Court of fact finding, and it has to re-appreciate the entire evidence and give finding independently. This Court finds that, on the date of accident, ie., on 17.05.2012, there was no insurance policy in force. Tribunal rightly appreciated the evidence and exonerated the insurance company.

10. Since the deceased was aged 15 years at the time of accident, Tribunal awarded compensation of Rs.2,80,000/-. This Court also finds

that in the absence of income, the claimants cannot be stated as dependants, the concept of paying compensation is not to the life of a person, but it is solatium. This Court finds that there is no perversity in appreciation of evidence by the Tribunal and there is no reason to interfere with the impuged Award passed by the Tribunal. Hence, the Civil Miscellaneous Appeal is dismissed. No costs.

18.07.2023

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Index:Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No

To

1. The Chief Judge,
Motor Accident Claims Tribunal,
Small Causes Court at Chennai.

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

P.VELMURUGAN, J.

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