IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.1829 of 2014

1.R.Srilakshmi

2.Minor R.Priyanka
D/o. Late K.Ramesh
Represented by next friend/guardian/mother/
1st appellant.

3.Jayalakshmi ...Appellants

Vs

1.Ramasamy

2.Reliance General Insurance Co. Ltd.,
Sri Lakshmi Complex,
Omalur Main Road,
Swarnapuri, Salem -636 004. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.08.2013 made in M.C.O.P.No.1856 of 2008 on the file of the Motor Accidents Claims Tribunal, Salem (The Additional District Judge and Special Judge for EC Act cases, Salem).

For Appellants : Mr.V.Sekar

For R1 : Ex-parte

For R2 : Mr.S.Arun Kumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 27.08.2013 made in M.C.O.P.No.1856 of 2008 on the file of the Motor Accidents Claims Tribunal, Salem (The Additional District Judge and Special Judge for EC Act cases, Salem).

2.The appellants/claimants filed M.C.O.P.No.1856 of 2008 on the file of the Motor Accidents Claims Tribunal, Salem (The Additional District Judge and Special Judge for EC Act cases, Salem), claiming a sum of Rs.20,00,000/-, as compensation for the death of K.Ramesh, in the accident that took place on 19.05.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the 1st respondent's lorry and directed the 1st respondent to pay a sum of Rs.5,25,000/-, along with interest at the rate of 7.5% as compensation to the appellants/claimants.

4.Aggrieved over the award passed by the Tribunal, the appellants/claimants filed the present appeal.

5.Learned counsel appearing for the appellants/claimants would submit that the accident took place on 19.05.2008 at 9.30 p.m. The 2nd respondent/Insurance Company has issued the cover note for the policy coverage on 19.05.2008, which would show that the policy commence from 19.05.2008. The said policy cover note was furnished by the 1st respondent/owner of the vehicle to the 2nd respondent/Insurance Company and the same has been marked as Ex.R2. The report of the Motor Vehicle Inspector also shows the date of commencement of insurance policy as 19.05.2008. The said report has been marked as Ex.P3. Therefore, he would contend that when the vehicle was insured and the cover note was issued by the 2nd respondent/Insurance Company on 19.05.2008, the Tribunal in a mechanical manner, without taking into consideration of all these aspects, based on Ex.R4/cover note filed by the 2nd respondent/Insurance Company has held that the policy was issued only on 23.05.2008 and exonerated the 2nd respondent/Insurance Company from its liability and thereby, directed the 1st respondent/owner of the vehicle to pay the entire compensation stating that there was no valid insurance coverage on 19.05.2008. Hence, the present appeal has been filed praying to direct the 2nd respondent/Insurance Company to pay the compensation since valid cover note was issued by the Insurance Company on 19.05.2008.

6.Per contra, Mr.Arunkumar, learned counsel appearing for the 2nd respondent/Insurance Company would submit that the 2nd respondent/Insurance company have made a request to the 1st respondent to produce original copy of the cover note through Ex.R1. Only the xerox copy of the cover note was sent by the 1st respondent, which has been marked as Ex.R2. Upon verification from the register of the 2nd respondent, they have not find any such cover note dated 19.05.2008. However, the cover note for the policy was issued to the 1st respondent only on 23.03.2008, by virtue of the same, the insurance policy was valid from 25.03.2008 at 00.01 hours till 24.05.2009 mid night, which has been marked as Ex.R5. Further, he would submit that taking into consideration Ex.R5/cover note, the Tribunal has arrived at the correct conclusion. Therefore, the well considered judgment need not be interfered.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the materials available on record.

8.Upon hearing and perusal of the documents, it appears that in the present case, the accident took place on 19.05.2008 at about 09.30 p.m., The contention of the appellants/claimants is that the cover note was issued on 19.05.2008 itself and the said document was obtained from the 1st respondent/owner of the vehicle and it has been marked as Ex.R2. The 2nd respondent/Insurance Company has also marked originally the cover note dated 23.05.2008, based on which insurance policy was issued, which has been marked as Ex.R5. In Ex.R5/cover note, the date and time has been clearly mentioned and the signature of the proposer is available. However, on perusal of the Ex.R2/cover note, the time and signature of the proposer are not available. In the absence of those particulars, the Tribunal has taken adverse inference against the 1st respondent and exonerated the 2nd respondent/Insurance Company from paying the compensation.

9.The 1st respondent/owner of the vehicle remained ex-parte before the Tribunal and the document provided by him to the 2nd respondent/Insurance Company has been marked as Ex.R2/photocopy of the cover note, in which the proposer signature and the time of the policy commencement were not found. After considering all these aspects, the Tribunal has rightly come to the conclusion that the policy was issued only on 25.05.2008 and accordingly, directed the 1st respondent/owner of the vehicle to pay the compensation. Therefore, this Court does not find any error in the finding of the Tribunal.

10.In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is confirmed. The 1st respondent/owner of the vehicle is directed to deposit the entire amount awarded by the Tribunal along with interest and cost, less the amount, already deposited if any, within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit the appellants/claimants are permitted to withdraw their respective shares by filing appropriate application before the Tribunal, as per the apportionment fixed by the Tribunal along with interest and cost, less the amount if any, already withdrawn. No costs.

13.07.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
rst

To:

The Motor Accident Claims Tribunal
The Additional District Judge and
Special Judge for EC Act cases, Salem.

KRISHNAN RAMASAMY,J.

rst

C.M.A.No.1829 of 2014

13.07.2023