IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1000 of 2017

The National Insurance Co. Ltd.,
No.73, Perundurai Road,
Near Collector Office,
Post Box No.911,
Erode - 638 001. ... Appellant

Vs.

1. K.M. Murugaiyan (died)
2. B. Ganesh Kumar
3. P. Viswanathan
4. Kannammal
5. Thangamani
6. Suresh Kumar … Respondents

(RR4 to 6 brought on Record as LR's of the Deceased R1 vide Court Order dated 08.03.2019 made in C.M.P. No.2476/2019.)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 13.06.2016 made in M.C.O.P. No. 730 of 2013, on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Erode.

For Appellant	:	Mr. J. Chandran
For R1	:	Died
For RR 2 and 3	:	AOS not filed
For RR 4 to 6	:	Mr. V. S. Kesavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the Award and Decree dated 13.06.2016 made in M.C.O.P. No. 730 of 2013, on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Erode, whereby, the Tribunal has directed the Insurance Company to pay a sum of Rs.2,81,950/- as compensation to the claimant.

2. For the sake of convenience, the parties are referred to herein according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 07.05.2013 at about 6:30 P.M, the claimant was riding in his TVS XL two wheeler bearing Registration No. TN-33-AS-5260 on the left hand side of the Panapalayam to Thamaripalayam road. While the claimant reached near Old Thamarai School, at that time, a tractor bearing Registration No. TN-33-BC-1902 driven by its driver in rash and negligent manner came in the opposite direction and hit against the two wheeler of the claimant, which resulted in causing serious injuries to him. The claimant was immediately taken to the National Hospital, Erode and after treatment, the claimant has come forward to file a claim petition. In this regard, a criminal case was also registered against the first respondent in Crime No. 201 of 2013 U/s. 227, 338 of IPC on the file of the Sub-Inspector of Police, Kodumudi Police Station.

4. The first respondent is the driver and the second respondent is the owner of the tractor have not contested the claim before the Tribunal and was remained ex-parte. The third respondent is the insurer of the tractor has contested the claim and filed counter and contended that the claimant himself is a tort feasor and due to his own negligence, the accident had occurred hence the claimant is not entitled to claim compensation. At the time of accident, the driver of the tractor does not have a valid driving licence, hence, there is a violation of policy condition. The F.I.R. in Crime No. 201/2013 was also closed as "mistake of fact" that the claimant himself is responsible for the accident. Hence prays to dismiss the claim petition. The second respondent also stated that at the time of accident, there is no insurance policy for the trailer in the name of third respondent/insurance company, hence, the third respondent is not liable to pay any compensation.

5. Before the Tribunal, on the side of the claimant, P.W.1 to P.W.4 were examined and Exs.P1 to P15 were marked, on the side of the respondents, R.W.1 and R.W.2 were examined and Exs.R1 to R5 were marked.

6. Based on the evidences placed on record, the Tribunal in point No.1, has held that the accident has occurred due to rash and negligent driving of the first respondent. In point No.2, the Tribunal has quantified the compensation and granted a sum of Rs.2,81,950/- as compensation with interest @ 7.5% per annum from the date of petition till the date of final payment. In point No.3, the Tribunal has held that the third respondent is liable to pay compensation and recover the same from the second respondent/ insured by directly, in accordance with law.

7. The major contention of the Insurance company is that the accident had occurred only due to the negligent act of the claimant and the criminal case registered was also closed as 'mistake of fact'. Since the claimant himself is a tortfeasor, the insurance company is not liable to pay the compensation. It is also contented by the insurance company that the trailer was not insured with the insurance company and the driver of the tractor was not having valid driving licence. Further, the tractor was also used for commercial purpose hence this ground is sufficient for rejecting the claim of compensation against the insurance company.

8. The learned counsel for the claimant has submitted that F.I.R. was originally registered against the driver of the tractor and subsequently closed, on the ground of "mistake of fact". Before the Tribunal, it has been elicited that without proper investigation, the criminal case has been closed as mistake of fact. Hence, separately a private complaint was also filed against the driver of the tractor and there is also a record that the driver of the tractor is responsible for the accident and the same has been properly considered by the Tribunal. Hence, there is no informity in the finding that the driver of the tractor is a tortfeasor and there is no violation of policy condition as contended by the insurance company, even if it is contended that there is a violation of policy condition, in this case, the injured is a third party, so, the principle of 'Pay and Recover' would be a proper remedy to the claimant herein. It is also submitted that the Tribunal has considered the objections raised by the Insurance Company in this regard and rightly came to the conclusion to dismiss the appeal.

9. I have heard the submissions of the learned counsel on both sides and also perused the materials placed on record.

10. Before the Tribunal, to prove the negligent act on the part of the driver of the tractor, the claimant has examined himself as P.W.1 and stated that on 07.05.2013 at about 6:30 PM, he was riding in his TVS XL two wheeler from North to South on the left hand side of the Panapalayam to Thamaripalayam road, at that time, a tractor driven by its driver in rash and negligent manner came in the opposite direction and hit against his two wheeler and P.W.1 relied on the F.I.R., which was registered against the driver of the tractor.

11. The insurance company has relied on the evidence of Sub-Inspector of Police 'Tmt. Koperundevi' of Taluk Police Station, Erode, who was examined as R.W.1 and she has conducted investigation and stated that, on the basis of complaint launched by one Thiyagu, who was examined as P.W.2 before the Tribunal, a criminal case in Crime No. 201 of 2013 was registered on the file of Kodumudi Police Station. She has examined the witnesses and after concluding investigation, she has filed the Final Report as "mistake of fact", since, the witness has stated before her that the injured himself has hit on the tractor. In the cross examination, it is elicited that, she has only conducted further investigation after preliminary investigation done by the Head Constable. It is also admitted by her that she has not recorded any separate statements from any of the witnesses. It shows that R.W.1 has not independently recorded statements given by the witnesses to her. It is also suggested that the final report has been filed in favour of the driver of the tractor since the tractor driver contested that the claimant himself came and hit on the wheel of the trailer, which alone is not sufficient to find the negligence on the part of the claimant.

12. In this case, R.W.1 is not the eye witness, similarly R.W.2 is also not the eye witness and also insurance company has not come forward to examine the driver of tractor. The reliance placed on the police alone is not sufficient to disprove the evidence of P.W.1, since his evidence is based on hearsay evidence and he has not stated about the manner of accident.

13. Accepting the evidence of P.W.1, who is injured in the occurrence and the Tribunal by appreciating the evidences placed on record, held that the claimant has probable evidence in the case with regard to allegation regarding the negligence act on the part of the driver of the tractor. The standard of proof in proving the negligent act in M.C.O.P. Cases, is well settled and it is only the preponderance of probability. In this case, the evidence of injured P.W.1 is more probable than the contra evidence relied on by the insurance company. Accordingly, this Court accepts the claim of the claimant that the accident had occurred due to the negligent act on the part of the driver of the tractor.

14. It is also the case of the insurance company that the driver of the tractor was not having valid driving licence to drive the tractor. The Tribunal based on the evidences placed on record such as Ex.R3-Registration Certificate of the Tractor, Ex.R4.- Insurance policy and Ex.R5 - Driving licence of the driver of the first respondent has concluded that the driver of the tractor was not having a valid driving licence to drive the tractor. Hence, the Tribunal has held that the owner of the vehicle has committed violation of policy condition and this Court also finds no infirmity in the finding of the Tribunal.

15. The next contention that the trailer was not insured is concerned, admittedly, the trailer was attached with the tractor and no evidence placed on record to show whether the trailer was insured or not. This Court in ***The Divisional Manager, Union India Insurance Co. Ltd., vs. Subramani and others [C.M.A. No.1815 of 2015, dated 28.09.2020]*** and in the case of ***The Branch Manager, Oriental Insurance Company Limited vs. Krishnammal and others*** [***C.M.A.(MD) No.137 of 2021, dated 23.09.2021]*** held that, if trailer is not attached with any vehicle, it cannot move on its own. Once a trailer is attached to the tractor, it becomes a single unit vehicle, hence the owner of the trailer as well as the owner of the tractor are equally liable for any loss. If it is proved that the trailer was not insured and whether the tractor and the trailer are owned by one and the same or different persons before plying on the road, the tractor owner should ensure that the tractor as well as the trailer attached to it are duly insured. If there is any lapse on the part of the owner, it amounts to violation of policy condition as well as the Motor Vehicle Act. In such cases, the insurer have no responsibility to indemnify the owner. It is also held that, if the tractor was insured and the trailer has no insurance coverage, then the insurance company shall indemnify 50% of the liability and balance 50% should be paid by the owner of the vehicle.

16. In this case, the tractor is insured and the trailer alone disputed that it is not insured with the third respondent insurance company, for the purpose of compensation, this Court has held that 50% has to be paid by the insurance company and 50% by the owner of the offending vehicle. However, in this case, there is yet another violation of non possession of valid driving licence by the driver of the offending vehicle, hence, the insurance company is not liable to indemnify 100% compensation. However in this case, the claimant herein is third party and accordingly, the Tribunal has adopted the principle of 'Pay and Recover'.

17. It is also the contention of the learned counsel for the claimant that the tractor is used for commercial purposes but there is no evidence available on record to show that the tractor was used for commercial purpose and this contention is hereby rejected.

18. Considering the above findings that the driver of the first respondent vehicle is responsible for the accident, the trailer attached to the tractor was not insured and the driver of the first respondent does not have a valid driving licence, this Court is of the view that the entire compensation has to be paid by the insurance company to the claimant and the insurance company is entitled to recover the same from the second respondent, who is the owner of the offending vehicle.

19. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company is dismissed. The Award and Decree passed by the Motor Accident Claims Tribunal, Special Sub Judge, Erode, made in M.C.O.P. No. 730 of 2013, dated 13.06.2016 is hereby confirmed. There shall be no order as to costs.

21.09.2023

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

To:

1. The Special Sub-Judge,
   Motor Accident Claims Tribunal,
   Erode.

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

K. RAJASEKAR, J.

stn

C.M.A. No. 1000 of 2017

21.09.2023