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C.M.A. No.325 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.325 of 2019

1. B.Vijaya
2. P.T.Jagadeesan
3. Subbammal

... Appellants

Vs.

1. S.Sivaraj
2. R.Rangasamy
3. Reliance General Insurance Co. Ltd.,

Branch Office:

408, III Floor, Perundurai Road,
Erode - 638 011.

... Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1989, to set aside the fair and decretal order dated 16.09.2017 passed in MCOP No.26 of 2013 on the file of the Motor Accidents Claims (Special Subordinate Judge), Coimbatore, insofar as it relates to Clause 3 of the decretal order.

For Appellant : Mr.K.Goviganesan

For Respondents : R1 and R2 set ex-parte by this
Court vide order dated 15.06.2023
M/s.C.Bhuvanasundari for R3



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ORDER

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This Civil Miscellaneous Appeal is filed to set aside the fair and decretal order dated 16.09.2017 passed in MCOP No.26 of 2013 on the file of the Motor Accidents Claims (Special Subordinate Judge), Coimbatore, insofar as it relates to Clause 3 of the decretal order wherein, it is stated that since the claim against the insured 2nd respondent is dismissed the 3rd respondent is not directed to pay the award amount.

2. The appellants are claimants. The claimants filed a claim petition in MCOP No.26 of 2013 on the file of the Motor Accidents Claims (Special Subordinate Judge), Coimbatore, under Section 166(1)(c) of the Motor Vehicles Act, Amended 54/1994 read with Rule 3(1) of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.4,50,000/- from the respondents for the death of the deceased Thippappa Gowder in the the road accident that occurred on 30.11.2011. Though the Tribunal after enquiry has come to the conclusion that the claimants are jointly entitled to compensation of Rs.2,47,000/- along with interest at 7.5%, made certain observations as follows;

14. POINT No.3



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By whom the compensation has to be paid?

The 1st respondent is the driver of the Tempo and the 2nd respondent is the owner of the offending vehicle which was insured with 3rd respondent at the time of accident. As per the decision arrived by this Forum while answering the earlier points, the 1st respondent's rash and negligent driving is the cause for the accident. Hence, as the owner of the offending vehicle, the 2nd respondent is liable to pay compensation to the petitioners. The offending vehicle was insured with the 3rd respondent at the time of accident. The driver and owner of the vehicle being the respondents 1 & 2 have not appeared in this case. As the process was not paid for issuance of notice to R1 and R2, the claim against R1 & R2 was dismissed for default as per order dated 03.09.2013. The effect of such order is that the petitioner cannot make any claim against R1 & R2. Though the petitioners are entitled for compensation and the 3rd respondent being the insurer is liable to pay the compensation to the petitioners, the 3rd respondent cannot be directed to pay the compensation as no liability can be fastened on the 2nd respondent insured. As per the contract of insurance the 3rd respondent has to indemnify the 2nd respondent insured in case of any liability arising out of claim by third party. Therefore, the 3rd respondent cannot be also directed to pay the award amount. Accordingly this Forum answers Point No.3.



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3. The learned counsel for the appellants/claimants submitted that the driver and owner of the offending vehicle were impleaded as 1st and 2nd respondents and since the batta was not paid for the issuance of notice to them, the claim petition was dismissed against the 1st and 2nd respondents. Since because the claim was dismissed against the 2nd respondent, the liability of the 3rd respondent/Insurance Company was also exonerated. The learned counsel further submitted that due to the fault on the part of the counsel, the claimants should not suffer. Further he submitted that substituted service was taken on the 1st and 2nd respondents. However, there was no representation for the 1st and 2nd respondents before this Court on 15.06.2023 and hence, they were set ex-parte by this Court.

4. Heard the learned counsel for the appellants/claimants and the learned counsel for the 3rd respondent/Insurance Company and perused the materials available on record including the order of the Tribunal.

5. It is seen that the claim petition was not dismissed on merit against the 1st and 2nd respondents and it is dismissed only non payment of batta for issuance of notice to the 1st and 2nd respondents and since the



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claim was dismissed against the 1st and 2nd respondents/driver and owner of the offending vehicle, the liability of the insurance company was also exonerated by the Tribunal. As pointed out by the learned counsel for the appellants/claimants, because of the fault on the part of the counsel, poor litigants should not suffer. The Tribunal ought to have suo motu called for the policy and considering the counter statement of the Insurance Company and the Insurance Policy, should have taken a decision. If the Insurance is covered to the offending vehicle and no other issues were involved, the Tribunal should have ordered the Insurance Company to pay the compensation. But the Tribunal has exonerated the Insurance Company since the claim petition was dismissed as against the owner of the offending vehicle/2nd respondent. Therefore, the order of the Tribunal is set aside and the matter is remitted back to the Tribunal.

6. The appellants/claimants are directed to take steps to file appropriate petition before the Tribunal to restore the claim petition in accordance with law and also take notice to the respondents 1 and 2.



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7. The Tribunal is directed to take liberal view to restore the claim petition and decide the matter in accordance with law. However the claimants are not entitled to get interest from the date of dismissal of the claim petition and till the date of restoration against R1 and R2 in the claim petition. The counsel who appeared for the claimants before the Tribunal has to bear the said interest.

8. With the above directions, this Civil Miscellaneous Appeal is remitted back to the Tribunal. There shall be no order as to the costs in the present appeal.

20.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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To

1. The Motor Accidents Claims
(Special Subordinate Judge), Coimbatore.
2. The Section Officer,
VR Section,
High Court,
Madras.



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P.VELMURUGAN. J.

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