



CMA(MD).No.30 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 02.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.30 of 2012

and

M.P(MD)No.1 of 2012

The Branch Manager,
The New India Assurance Company Ltd.,
Branch Office,
480, Sekkalai Road,
Karaikudi,
Sivagangai District.

....Appellant

Vs.

1.Ponnalagu

2.Minor.Subramanian

3.Minor Saravanan

4.Minor Vasanth

5.Karuppan

6.Alagu

... Respondents

(Minor respondents 2 to 4 are represented through their mother and natural guardian Ponnalagu)



CMA(MD).No.30 of 2012

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order and decree dated 12.01.2011 in M.C.O.P.No.390 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal District and Sessions Judge, Pudukottai and to allow the appeal.

For Appellant : Mr.K.Murugesan

For Respondents : Mr.R.Aranvind for R6
No appearance for R1 to R4
Batta due for R5

JUDGMENT

The present Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.390 of 2008 primarily on the ground of liability.

2. According to the claimants, while the deceased was travelling in a bicycle on 18.11.2007, a tipper lorry belonging to the first respondent came in the same direction and dashed against the rear side of the bicycle in which the deceased Adaikkan died on the spot. The wife, minor children and the father of the deceased have filed the claim petition seeking compensation of Rs.15,00,000/-.



CMA(MD).No.30 of 2012

3. The owner of the tipper lorry remained exparte and the Insurance Company had filed a counter specifically contending that the driver of the tipper lorry namely, Pandiyan, did not have Driving Licence at the relevant point of time. The Company further pointed out that they would produce the charge sheet, in which, the driver was charged with Section 3 of the Motor Vehicles Act. After considering the oral and documentary evidence, the Tribunal had come to a conclusion that the accident has taken place due to the rash and negligent driving on the part of the tipper lorry driver. The Tribunal further found that the Insurance Company has not proved that the driver of the tipper lorry was not having valid Driving Licence at the relevant point of time. Therefore, the Tribunal proceeded to fix the quantum of compensation at Rs.3,38,400/-. Challenging the said award, the present Appeal has been filed by the Insurance Company.

4. According to the learned counsel appearing for the Insurance Company, the Company has taken a specific stand in the counter that the driver of the tipper lorry did not have any valid Driving Licence at the relevant point of time. The Company has sent a legal notice to the



CMA(MD).No.30 of 2012

insured under Ex.R1 on 27.07.2010 calling upon him to produce all the relevant documents relating to the vehicle and the Driving Licence of the driver. Though the said notice has been received by the insured, he has not chosen to reply. The learned counsel for the appellant has further contended that the Company has examined the Officers from the Regional Transport Office as DW1 and DW2 and they have also filed the charge sheet as Ex.X3 which would clearly indicate that the driver of the tipper lorry has been charged for the offence under Section 3 of the Motor Vehicles Act. Therefore, the Tribunal was not right in arriving at a conclusion that it is not known whether the driver of the tipper lorry was in possession of Driving Licence or not. The Tribunal has proceeded to fix the liability on the Insurance Company without any relief for recovering the same from the owner of the tipper lorry in view of the violation of the policy conditions. Hence, he prayed for allowing the appeal.

5. *Per contra*, the learned counsel appearing for the owner of the tipper lorry had contended that the Tribunal has arrived at a specific finding that the Insurance Company has not established beyond doubt



CMA(MD).No.30 of 2012

that the driver of the tipper lorry was not having Driving Licence at the relevant point of time. When the Insurance Company has not established about the non-holding of the Driving Licence by the tipper lorry driver, the Tribunal cannot be faulted for fixing the liability on the Insurance Company. He further contended that the award passed by the Tribunal may be confirmed in view of the subsistence of the Insurance company.

6. I have carefully considered the submissions made on either side.

7. The specific contention of the appellant / Insurance company is that the driver of the offending vehicle namely, the tipper lorry, was not having any Driving Licence at the relevant point of time. The Company has issued Ex.R1 notice to the owner of the tipper lorry calling upon him to produce the Driving Licence. Though the owner had received the notice, he has not chosen to reply. Before the Tribunal, the owner has remained exparte and he has not chosen to examine himself in order to establish that his driver was having Driving Licence at the relevant point of time. A perusal of Ex.X3



CMA(MD).No.30 of 2012

indicates that the driver of the offending vehicle has been charge sheeted under Section 3 of the Motor Vehicles Act. Therefore, it is clear that the driver was not having Driving Licence at the relevant point of time. The finding of the Tribunal that it is not known whether the driver was having Driving Licence at the relevant point of time or not is not legally sustainable. In view of the above said findings, it is clear that there is a clear breach of Policy Condition on the part of the owner of the tipper lorry. Therefore, the Tribunal ought to have directed the Insurance Company to satisfy the award and thereafter recover the same from the owner of the vehicle, in view of the violation of the Policy condition.

8. In view of the above said deliberations, the Civil Miscellaneous Appeal is partly allowed and this Court proceeds to pass the following order.

(a) The quantum of award is confirmed.

(b) The Insurance company is liable to satisfy the award and thereafter recover the same from the owner of the offending vehicle, namely, first respondent in the claim petition.



CMA(MD).No.30 of 2012

(c) With other respects, the award of the Tribunal stands confirmed.

(d) No costs. Consequently, the connected Miscellaneous Petition is closed.

02.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No

mbi

To

- 1.The Motor Accidents Claims Tribunal,
Principal District and Sessions Judge, Pudukottai
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CMA(MD).No.30 of 2012

R.VIJAYAKUMAR, J.

mbi

C.M.A(MD)No.30 of 2012

02.06.2023