IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20/11/2024

C O R A M

THE HONOURABLE Mr.JUSTICE **M.DHANDAPANI**

C.M.A.No.2256 of 2019

Ramalingam ... Appellant

Vs

1. T.D.Kaliyaperumal
2. T.D.K.Pandian
3. The Divisional Manager
   United India Insurance Co Ltd
   Nethaji Road
   Cuddalore. ... Respondents

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 5/7/2016 in M.C.O.P.No.415 of 1999 on the file of the Motor Accidents Claims Tribunal (Principal Sub-Court), Cuddalore.

For appellant ... Mr.S.Kalyanaraman

For respondents ... No appearance
for R.R.1 and 2

Mr.M.Krishnamoorthy
for R.3

J U D G M E N T

Challenging the compensation awarded by the Motor Accident Claims Tribunal (Principal Sub-Judge) Cuddalore, in M.C.O.P.No.415 of 1999, the claimant is before this Court.

2. The claimant, aged 25 years, alleged to be earning a sum of Rs.75/- per day, as Sithal Coolie, met with an accident on 25/1/1995, when the lorry bearing Registration No.TN-31-1636 belong to the second respondent, driven by the driver in a rash and negligent manner, dashed against the claimant, in which the claimant is alleged to have sustained multiple grievous injuries, as a result, the claimant was admitted in the hospital. Due to the loss suffered on account of the accident, he filed a claim petition, claiming a sum of Rs.2,50,000/- as compensation for the injuries suffered and also for loss of income, before the Motor Accident Claims Tribnal (Principal Sub-Judge), Cuddalore in M.C.O.P.No.415 of 1999.

3. Before the Tribunal, during trial, in order to prove his case, the appellant has examined three witnesses, viz., P.Ws.1 to 3 and marked as many as 14 documents, viz., Exs.P.1 to P.14. On the side of the respondents, there was no witness examined and no documents were marked.

4. After analyzing the oral and documentary evidence and considering the pleadings made by both the parties, the Tribunal has awarded a compensation of Rs.1,38,500/-, as compensation to the claimant. Challenging the liabilty and quantum fixed by the Tribunal, the appellant has come forward with the present appeal before this Court.

5. Heard Mr.S.Kalyanaraman, learned counsel for the appellant and Mr.M.Krishnamoorthy for the third respondent. There is no representation on behalf of the respondents 1 and 2.

6. The learned counsel appearing for the appellant submitted that first and second respondents are the owners of the vehicle insured with the third respondent. The trial Court failed to issue a direction to the third respondent to produce the insurance policy, in order to fasten the liability. The trial Court directed the third respondent to produce the insurance policy in order to fasten the liability as against the third respondent for payment of compensation. The said exercise was not exercised before the claims tribunal. Hence, the present appeal.

7. The third respondent/Insurance Company submitted that there is no privity of contract between second and third respondents. Without proving the same by the appellant, the claimant cannot expect the Tribunal to come to the conclusion that third respondent is liable to pay the compensation.

8. Perused the materials available on record.

9. The first respondent is the father of the second respondent. Admittedly, R.C book stands in the name of the second respondent and unnecessarily, first respondent/father was impleaded. Hence the trial Court has rightly dismissed the claim as against the first respondent.

10. The second respondent being the owner of the lorry, contested before the trial Court. No insurance policy was produced before the trial Court and in the absence of insurance policy and the contract in between the second and third respondents, third respondent is not liable to pay any compensation. Therefore, impugned order passed by the trial Court, need not be interfered with.

11. Admittedly, the second respondent is the owner of the lorry and the said vehicle was hit against the appellant, due to which the accident had happened and the appellant sustained injuries. Admittedly, first and second respondents are father and son. As per Ex.P.7 - permit copy, it is evident that second respondent being the son of the first respondent is the owner of the lorry bearing Registration No.TN-31-1636, thereby, claims Tribunal has rightly arrived at a conclusion that first respondent has no role to play. The appellant has issued the legal notice to the third respondent. Mere issuance of legal notice cannot clothe the third respondent with the liability. The main grievance of the appellant is that the Tribunal has to fasten the liability as against the insurance Company.

12. Now the issue arises before this Court is that whether the Tribunal has fastened the liability as against the second respondent is correct or not.

13. Primacy of a contract of insurance between the parties is the basis on which liability can be fastened on the insurer. In the present case, no documents have been produced to establish a contract of insurance between the second and third respondents. In the absence of a valid contract of insurance, the insurer cannot be made liable to pay the compensation and

therefore, the Tribunal has rightly come to the conclusion that the third respondent is not liable and it is only the second respondent who is liable to pay the compensation. The Tribunal has rightly fastened the liability as against the second respondent, which does not warrant any interference.

14. In the result, Civil Miscellaneous Appeal is dismissed and the award passed by the Motor Accident Claims Tribunal (Principal Sub-Judge) Cuddalore, in M.C.O.P.No.415 of 1999, is hereby confirmed. No costs.

20/11/2024

mvs.

Index : Yes / No
Neutral Citation: Yes/No

To

1. The Motor Accidents Claims Tribunal (Principal Sub-Court), Cuddalore.

2. The Divisional Manager
   United India Insurance Co Ltd
   Nethaji Road
   Cuddalore.

M.DHANDAPANI,J

mvs.

C.M.A.No.2256 of 2019

20/11/2024