BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA(MD)No.670 of 2021
and
CMP(MD)No.6294 of 2021

K.Mohammed Ansar : Appellant/1st Respondent

Vs.

1.R.V.Mariappan
2.M.Shanmugathai
3.M.Jeyasubramanian
4.M.Ganesamoorthy
5.M.Karthigaiselvi : Respondents 1 to 5/ Petitioners 1 to 5

6.The Divisional Manager,
The New India Assurance Company Limited,
Office functioning at Door No.161A,
Keelaveli Veethi,
Madurai. : 6th Respondent/ 2nd Respondent

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Subordinate Judge, Virudhunagar, in MCOP No.67 of 2014 dated 29th day of November, 2019 and pass such further or other orders.

For Appellant : Mr.R.J.Karthick

For R1 to R5 : Mr.P.Ganapathisubramanian

For 6th Respondent : Mr.M.S.Suresh Kumar

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking an order to set aside award passed by the Motor Accident Claims Tribunal, Subordinate Judge, Virudhunagar, in MCOP No.67 of 2014, dated 29th day of November, 2019.

2.**The facts in brief**:-

On 17/03/2014 at about 06.30 pm, the deceased Solaiappan was riding his two wheeler bearing registration No.TN-67-AA-6293 on the Madurai-Virudhunagar Main Road. At that time, the first respondent driver driving the Tipper Lorry bearing registration No.TN-58-AD-4169 from south to north direction namely in the opposite direction. Without showing any signal, he abruptly turned the vehicle right and hit the deceased two wheeler. As a result of which, Solaiappan fell down, sustained injuries, taken to the Madurai Government Rajaji Hospital. But without responding to the treatment, he died on 18/03/2014.

3.A case in Crime No.95 of 2014 was registered by the Silaiman Police Station against the Tipper Lorry Driver for the offence under section 304(A) IPC. Solaiappan was unmarried aged about 30 at the time of occurrence. He was working as Manager in J.T.M.K Auto

Agency, Virudhunagar, after completing DME course and drawing a salary of Rs.15,000/- per month. Claiming compensation of Rs.21,00,000/-, the claim petition was filed by the dependents.

4.That was resisted by the 1st respondent in the main petition namely the appellant herein stating that after unloading work was over, the driver of the Tipper Lorry parked the vehicle on the eastern side of the north-south National Highways Road near the SVK Complex in the ring road. Till the next day morning, he did not move the vehicle. The deceased without noticing the halted Tipper Lorry drove the two wheeler in a rash and negligent manner and hit the Tipper Lorry, as a result of which, he sustained injuries, for which, the first respondent vehicle driver is noway responsible.

5.The Insurance Company namely the 6th respondent herein filed a counter stating that apart from the negligence aspect on the part of the deceased, it is stated that the vehicle was insured for the period from 09/12/2013 to 08/12/2014. Premium was paid through Canara Bank cheque bearing No.840744 drawn on the Insurance Company for a sum of Rs.28,651/-. It was presented for payment, but returned on 16/12/2013 stating that exceeds arrangement. It was intimated to the first respondent through letter, dated 19/12/2013. It was also received on 28/12/2013. Thereafter only, the policy was taken on 26/03/2013. The accident took place on 17/03/2013. So, the Insurance Company is not liable to pay any compensation to the claimants.

6.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 23 documents were marked. On the side of the respondents, one witness was examined and 11 documents were marked.

7.With regard to the first aspect of negligence, the Tribunal recorded a finding that the first respondent driver was negligent in his driving and responsible for the accident and accordingly, concluded that finding.

8.Regarding the liability, it was held that on the date of the occurrence, there was no valid policy coverage, the Insurance Company cannot be held responsible for the compensation amount. Accordingly, the Insurance Company was exonerated.

9.Regarding the compensation, the monthly salary of the deceased was fixed at Rs.10,000/-. Future prospects was taken as 40%. After deducting half of the amount towards personal and living expenses, it arrived at Rs.12,85,200/- by taking '17' as multiplier, since he was aged about 30 at the time of the occurrence. To that, conventional amounts were added. Finally, the Tribunal arrived at Rs.13,95,000/- towards compensation as per the tabulation given hereunder:-

Loss of Dependency	Rs.12,85,200/-
Funeral expenses	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-
Loss of Filial consortium to the claimants 1 and 2	Rs. 80,000/-
Total	**Rs.13,95,200/-**

and directed the owner of the vehicle namely the first respondent in the main petition, who is the appellant herein to bear the entire compensation.

10.Against which, this appeal is preferred by the appellant.

11.Heard both sides.

12.With regard to the first point of negligence, no argument was advanced by the appellant.

13.Even though, it was contended by the appellant that the deceased without noticing the parked vehicle, hit the same is not supported by any evidence, the manner of the accident does indicate the rash and negligence on the part of the appellant driver stands established. So, no interference is called for on that aspect.

14.Regarding the compensation also, no much argument was advanced. On the basis of the evidence of PW2, the monthly income and age was fixed. Regarding the monthly salary and Loss of Dependency it was reasonably fixed. So it requires no interference. Other conventional amounts were also reasonably added. Regarding the compensation also, I find that no interference is called for.

15.With regard to the liability, much argument was advanced by the appellant. He would submit that absolutely there is no evidence on record to show that the dishonour of the cheque was brought to the notice of the appellant in time. No notice was served legally upon him. There is no evidence on record to show that the Insurance Company intimated about the dishonour of the cheque to the RTO. Had it been intimated in time, the above said fact would have been mentioned in the MV Inspector report itself. According to him, when no notice was served upon him regarding the dishonour of the cheque, the Insurance Company is liable to pay the compensation by adopting deeming principle.

16.Per contra, the learned counsel appearing for the Insurance Company would submit that the dishonour was intimated to the appellant through the registered post, but it was received on his behalf in the address mentioned in the policy application. So, they have discharged their burden and legal duty. It is for the appellant herein to prove that no notice was issued on his behalf.

17.We will straightaway go to the evidence on record on the aspect of service of notice. Notice of the Insurance Company is dated 19/12/2013 addressed to the appellant herein. Wherein, we see the address as follows:-

MOHAMED ANSAR K(PO18326660)
S/O.MR.M.KADAR MYDEEN PITCHAI
NO.19-B, SHANMUGANATHAPURAM 1ST ST
KARIMEDU, MADURAI DIST
MADURAI, TAMIL NADU 625 016

Wherein it is mentioned that the cheque has been dishoured due to exceeds arrangement. The appellant was directed to surrender the policy immediately. Simultaneously, on the same day itself, intimation was given to RTO, Madurai through the registered post acknowledgement due intimating the fact that the Insurance stands cancelled from the date of inception, dated 09/12/2013 at 0.9.00.00 AM. The notice sent to the appellant was received by another person mentioning the same that he received the notice on behalf of the appellant. It is dated 28/12/2013. This is disputed by the appellant stating that he never authorised any person to receive the registered post on his behalf. According to him, this cannot be termed as proper service of notice and for that purpose only, he would rely on the entries made in the MV report.

18.Now, we will go to the evidence on record.

19.Section 27 of the General Clause Act reads as follows:-

> ***"27.Meaning of service by post.***—
> *Where any 2 [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to*

be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

20.Reading of the above, deeming provision is in favour of the Insurance Company.

21.Now we will go to the evidence on record as mentioned above. To deny the fact that he never authorised any person to receive the registered post on his behalf and more particular, the person, who signed in the acknowledgment card, was not known to him or authorised by him. Absolutely, there is no evidence on his part. He was not even entered into the box. In this context, only section 27 of the Act came into operation.

22.Even if it is considered that it is not received by the appellant, deemed service can be taken. On that account, the contention of the appellant that it was not properly served upon him is not available to him.

23.Now we will see whether it is properly addressed by the appellant herein.

24.As mentioned above, notice was sent to the address mentioned in the proposal form. So, it has been properly addressed and stamped and sent through the registered post. Merely because, Motor Vehicle Inspector has mentioned that the Insurance policy was taken valid upto 08/12/2014, it does not bind the Insurance Company rights, though no acknowledgement card was produced by the Insurance Company with regard to the receipt of the intimation or cancellation by the RTO office.

25.So, I find no reason to interfere into the award passed by the Tribunal granting liberty upon the appellant herein. It is not the case of the appellant that against the postman, who allegedly served the notice to the wrong person, no complaint was lodged by the appellant. There is no such contention at all.

26.In the result, this Civil Miscellaneous Appeal is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

26/07/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Motor Accident Claims Tribunal/
The Sub Judge, Virudhunagar

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J

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