BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.58 of 2014
in
M.P(MD)No.1 of 2014

The Branch Manager,
United India Insurance Co. Ltd.,
Kumbakonam,
Thanjavur District. ... Appellant / 2nd respondent

Vs.

1.Dhanalakshmi

2.Kalaiselvi

3.Tamilarasi

4.Tamilselvi

5.Umarani

6.Chandrasekaran

7.Sivasubramanian ... Respondent Nos.1 to 7 / Claimants

8.Ravichandran ... Respondent No.8 / 1st respondent

Prayer : This Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, to allow this Civil Miscellaneous Appeal by setting aside the judgment and decree made in M.C.O.P.No.68 of 2012 dated 20.06.2013 on the file of the Learned Motor Accidents Claims Tribunal cum Principal Subordinate Judge, Kumbakonam.

For Appellant : Mr.C.Jawahar Ravindran
For R1 to R7 : Mr.C.Suresh Kannan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in M.C.O.P.No.68 of 2012 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Kumbakonam dated 20.06.2013, wherein the respondents 1 to 7 have filed a claim petition before the Tribunal for compensation of Rs.10,00,000/- and the Tribunal has awarded a sum of Rs.3,77,400/- towards compensation to the petitioners. Aggrieved by the above said order, the present appeal has been filed by the second appellant / insurance company. The case of the petitioners before the Tribunal is that, the petitioners are the legal heirs of one deceased Shanmugam, who died in the road accident.

2. On 28.08.2011 at about 4.30 p.m., when the deceased Shanmugam was walking in Vaigal Paliyanjiyanallur main road, the driver of the first respondent vehicle bearing registration number TN 51 M 6285 came in a rash and negligent manner, dashed against the said Shanmugam, thereby he sustained grievous injuries and admitted in the hospital. Thereafter, on the next day the said Shanmugam died in the hospital. The deceased was aged about 65 years and was earning a sum of Rs.6,000/- per month. The first respondent vehicle was insured with the second respondent. Thereby he claimed a sum of Rs.10,00,000/- towards compensation.

3. The case of the second respondent is that the petition is not maintainable either in law or facts. The second respondent denied the age, avocation, income of the deceased and the manner of accident. The petitioners are not dependants of the deceased. The driver of the first respondent had no valid licence to ride the vehicle on the date of accident. Therefore, the second respondent is not liable to pay any compensation to the petitioners.

4. Before the Tribunal, on side of the petitioners, they examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P4. On the side of the respondent, R.W.1 was examined and no document was marked.

5. After hearing both sides and perusing the records, the Tribunal has awarded a sum of Rs.3,77,400/- along with interest at the rate of 7.5% per annum, from the date of petition till the date of realization. As against the said award, the second respondent / insurance company has preferred this appeal on various grounds.

6. Learned counsel appearing for the appellant would contend that the driver of the vehicle had no license on the date of accident and the deceased was aged about 72 years. The income of the deceased are not proved by the petitioners. The petitioners are not dependants of the deceased. Further, the appellant had taken steps to examine the driver of the vehicle. But despite of summon served to him, he did not attend the Court. Thereby the appellant has discharged duty and since there is a violation of condition of policy, the first respondent / owner alone is liable for the compensation.

7. The learned counsel appearing for the respondents 1 to 7 would contend that the accident was occurred owing to the rash and negligent driving of the driver of the first respondent and the first respondent vehicle was insured with the second respondent and thereby the second respondent is liable to pay compensation to the petitioner, since the petitioners are third party to the insurance company. In order to prove the case of the petitioners, they have examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P4. The Tribunal after taking into consideration all the evidence adduced on either side, correctly awarded a compensation of Rs. 3,77,400/-. Therefore, the present appeal is liable to be dismissed.

8. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i) whether the appeal is liable to be allowed or not?

9. The appellant has filed this appeal on the ground that the appellant / second respondent / insurance company is not liable to pay any

amount to the petitioners, since there is a violation of conditions of policy. The driver of the first respondent had no valid licence to ride the vehicle and thereby the appellant / second respondent is not liable to pay any compensation. In order to prove their contention, R.W.1 was examined and also they have taken summons to the driver of the first respondent, but unable to examine the driver due to his non appearance, thereby the insurance company has taken steps to discharge the liability.

10. Though summon was served to the first respondent / owner of the vehicle, he has not contested the case before the Tribunal and it is the duty of the owner of the vehicle to furnish the particulars to the insurance company. But the first respondent who was set ex-parte before the Tribunal.

11. Further, the learned counsel for the appellant relied upon a judgments in ***i) 2000 (3) LW 613*** in the case of ***Oriental Insurance Co., Ltd., M/s. Thanjavur Vs G.Ramasamy and P.N.Ramachandran, ii) 2004 (1) TN MAC (DB) 455*** in the case of ***National Insurance Company Limited, Bhavani Vs. Samiyathal and others.*** On careful perusal of the

above judgments, it is clear that the Motor Vehicles Act imposes a duty on the insurance company to furnish sufficient material to show that the driver has no proper license, which burden would be discharged either by producing a license which does not contain any endorsement to drive the vehicle or a report of an official witness from the local Regional Transport Office. Further, by taking steps to examine the driver of the vehicle, the insurance company discharged initial responsibility in proving that driver of vehicle has no licence.

12. In the case on hand also, the insurance company has taken steps to examine the driver of the vehicle but he failed to appear after receipt of summons, thereby discharged its liability to prove its contention. Therefore, in view of the above discussions, it is appropriate to order the insurance company to pay the amount to the claimants and thereafter they can recover the same from the owner of the vehicle. There is no dispute with regard to the quantum of the amount. The Tribunal has awarded a sum of Rs.3,77,400/- with interest at the rate of 7.5% per annum.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the order passed by the Tribunal in M.C.O.P.No.68 of 2012 dated 20.06.2013 on the file of the Learned Motor Accidents Claims Tribunal cum Principal Subordinate Judge, Kumbakonam, is modified to the effect that the appellant / second respondent has to pay the above said amount to the claimants and thereafter the appellant / second respondent can recover the same from the first respondent / owner. The appellant / second respondent has to deposit the above said award amount of Rs.3,77,400/- (Rupees Three Lakhs Seventy Seven Thousand and Four Hundred only) along with interest at the rate of 7.5% per annum, within a period of two months from the date of this order and thereafter the second respondent can recover the award amount from the first respondent. After deposit of the amount, the claimants 1 to 7 are entitled to withdraw the amount as per the order of the Tribunal. Consequently, connected miscellaneous petition stands closed.

11.01.2024

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

1. The Motor Accidents Claims Tribunal cum
Principal Subordinate Judge, Kumbakonam.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

P. DHANABAL, J.

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