BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.937 of 2024
and
C.M.P.(MD) No.9887 of 2024

The Branch Manager,
The Future General India Insurance Co. Ltd.,
III-Floor, Sriram Centre,
No.180, B.B.Chavadi,
Theni Road, Madurai. ... Appellant

Vs.

1.Veeramani
S/o.Guruputhira Thevar

2.Vairam
W/o.Veeramani

3.Lavai Joseph ... Respondents

[R1 - died]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the fair and decreetal order dated 17.04.2014 made in M.C.O.P.No.3 of 2013 on the file of the Motor Accident Claims Tribunal (Additional District Court), Virudhunagar District.

For Appellant : Mr.S.Srinivasa Raghavan

For R2 & R3 : No appearance

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JUDGMENT

The Insurance Company has preferred the instant appeal challenging the Tribunal's finding on liability.

2. The first and second respondents had filed a claim petition before the Tribunal, stating that on 16.05.2011, at about 07:00 a.m., while the deceased was traveling in a backhoe loader [commonly known as a JCB] bearing registration No.TN-63-H-5214, insured with the appellant, the driver had driven it in a rash and negligent manner, as a result of which the deceased fell off the JCB and sustained fatal injuries.

3. The owner of the insured vehicle remained *ex parte* before the Tribunal.

4. The appellant, Insurance Company, filed a counter stating that they are not liable to pay compensation as the insurance policy

commenced only on 19.05.2011, whereas the accident took place on 16.05.2011 and therefore prayed for dismissal of the claim petition.

5. Before the Tribunal, the claimants examined P.W.1 and P.W.2 and marked Exs.P1 to P8, and the appellant, Insurance Company, examined R.W.1 and R.W.2 and marked Exs.R1 and R2.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the insurance policy commenced on 19.05.2011, and however directed the appellant, Insurance Company, to pay the compensation and recover the same from the owner of the insured vehicle, namely, the third respondent herein.

7. The learned counsel for the appellant, Insurance Company, submitted that in the absence of a valid insurance policy, the direction to pay and recover the compensation cannot be sustained and therefore prayed for setting aside the award of the Tribunal.

8. The first respondent is no more, and the appellant has filed a memo to the effect that the second respondent is only the legal heir of the

deceased first respondent. The said memo is based on their enquiry. Admittedly, the deceased was a bachelor, and the parents of the deceased were the claimants. Notices sent to the second respondent, the second claimant, and the third respondent, the owner of the vehicle, were returned with the endorsement 'addressee cannot be located.' Therefore, this Court ordered paper publication on 04.09.2024. Although the paper publication was effected and the names of the second and third respondents were printed in the cause list, none has entered appearance.

9. The only point for consideration in the instant appeal is whether the Tribunal's finding on liability is justified.

10. The admitted facts are that the accident took place on 16.05.2011, but the insurance policy commenced only from 19.05.2011 as could be seen from the Insurance Policy (Ex.R2). The Tribunal found that on the date of the accident, there was no valid insurance policy. This Court is of the view that the Tribunal, having found that there was no policy on the date of the accident, ought not to have directed the appellant to pay and recover the compensation. The appellant cannot be even directed to pay the compensation and recover the same from the owner, in

the absence of a contract of insurance on the date of the accident. Therefore, the finding of the Tribunal directing the appellant, Insurance Company, to pay the compensation at the first instance and recover the same from the third respondent is set aside.

11. However, the third respondent is liable to pay the compensation. It is open for the second respondent to recover the compensation awarded by the Tribunal from the third respondent in the manner known to law.

12. The appellant, Insurance Company, is permitted to withdraw the amount already deposited, if any, together with interest accrued thereon, by filing suitable application before the Tribunal.

13. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

14.10.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

JEN

Copy To:

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Virudhunagar District.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

SUNDER MOHAN, J.

JEN

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