(2012) 08 MAD CK 0143

In the Madras High Court

Case No : CMA. (MD) . No. 392 of 2008

The Oriental Insurance Co., Ltd. APPELLANT

Vs

Jainambu and Others RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 15, 15(1), 8

Citation : (2013) 1 LW 286

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : A.K. Baskarapandian, for the Appellant; P. Jayaprakash Narayanan for R1 to R7, for the Respondent

Final Decision : Dismissed

Judgement

T. Mathivanan, J.—This civil miscellaneous appeal is directed against the award and decree dated 10.08.2005 and made in M.C.O.P. No. 3157 of 2002, on the file of the Motor Accident Claims Tribunal (Additional Sub-Court-III), Trichy. The second respondent Insurance Company in the claim petition is the appellant herein. Whereas, the claimants 1 to 7 are the respondents 1 to 7 herein and the first respondent in the claim petition, who is the owner of the vehicle, is the eighth respondent herein.

2. The respondents 1 to 7 had made a claim before the learned Motor Accident Claims Tribunal (Additional Sub-Court-III), Trichy, claiming a sum of Rs. 10,00,000/- for the death of one Mr. K.M. Abdul Razak, who is none other than the husband of the first respondent and father of the respondents 2 to 7.

3. It is alleged that on 26.06.2002, at about 05.45 a.m., the deceased K. M. Abdul Razak was knocked down by a car bearing registration No. TN07 M3495, when he was walking near Mangalya Mahal at Rail Nagar in Ariyamangalam in Trichy-Thanjavur main road.

4.0n account of the accident, he had sustained head injuries and thereafter he died at 07.15 a.m., while he was on treatment at Government Head Quarters Hospital, Trichy. The claimants had alleged that the alleged accident was occurred only due to rash and negligent driving of the driver of the vehicle.

5. It appears from the averments of the claim petition that the deceased was aged about 50 years at the time of accident and was manufacturing and selling Phenile and thereby earned Rs. 10,000/- per mensem

6. The first respondent had not chosen to contest the claim of the respondents 1 to 7. But, the appellant being the Insurance Company, with whom the offending vehicle bearing registration No. TN07 M3495 was insured at the relevant period, had alone contested the claim of the claimants.

7. The main contention, apart from blaming upon the deceased for having crossed the road unmindful of approaching of the first respondent''s vehicle, was that the first respondent was not having valid driving licence to drive the vehicle at the time of accident. Since it was a violation of the insurance policy, the appellant Insurance Company was not liable to indemnify the first respondent.

8. This contention was ignored by the learned Motor Accident Claims Tribunal and proceeded to pass an award of Rs. 3,03,000/- after appreciation of the evidences both oral and documentary. The Tribunal has also directed the respondents 1 to 2 to pay the award amount jointly and severally within a period of two months together with interest at the rate of 7.5% per annum from the date of award.

9. As observed herein before, the eighth respondent herein, who is the owner of the vehicle had never chosen to contest the claim petition.

10. Ex. B2 is the xerox copy of the driving licence, which appears to have been issued to the eighth respondent Mrs. Shanthi Sundaramoorthy. It is revealed from this document under Ex. B2 that the eighth respondent was issued with driving licence on 23.01.1995 to drive light motor vehicles, which would expire on 04.05.2001.

11. From Ex. B2, which has been marked through R.W. 1, it is crystallised that the driving licence issued to the eighth respondent was expired on 04.05.2001. There is no evidence on record to show that any application was made within thirty days after expiry of the licence on 04.05.2001 as contemplated u/s 15(1) of the Motor Vehicles Act.

12. Section 15 of the Motor Vehicles Act deals with renewal of driving licence. Sub-section (1) to Section 15 contemplates that:

Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry.

The first proviso to Sub-section (1) to Section 15 contemplates that:

Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal.

The second proviso to Sub-section (1) to Section 15 contemplates that:

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of Section 8, and the provisions of sub-section (4) of Section 8 shall, so far as may be apply in relation to every such case as they apply in relation to a learner''s licence.

13. As rightly argued by the learned counsel appearing for the appellant, though the driving licence was expired as early as on 04.05.2001, the eighth respondent had not never applied for the renewal of the licence as envisaged u/s 15(1) of the Motor Vehicles Act.

14. Under this circumstance, this Court finds that the appellant Insurance Company cannot be melted with the liability of paying compensation to the respondents 1 to 7 being the claimants as there is clear violation of policy conditions.

15. In this connection, this Court finds that the finding of the Tribunal holding the appellant/second respondent vicariously liable to pay the award amount along with the eighth respondent is absolutely erroneous and liable to be set aside.

16. It is made clear that the accident was taken place on 26.06.2002 and the driving licence of the eighth respondent was expired on 04.05.2001. The acquiescence on the part of the eighth respondent for more than one year makes her liable to pay the award passed by the Tribunal to the respondents 1 to 7/ claimants.

17. Further, it is made clear that the eighth respondent being the owner of the vehicle alone is responsible and liable to pay the compensation as directed by the Tribunal together with interest at the rate of 7.5% per annum from the date of Judgment, if the amount is not deposited earlier. If the amount is already deposited by the second respondent as directed by the Tribunal, then it is left open for the appellant Insurance Company to get it reimbursed from the eighth respondent, who is the owner of the vehicle.

18. Keeping in view of the above fact, this civil miscellaneous appeal is liable to be allowed and the appellant being the Insurance Company is deserved to be exonerated from the liability of paying the award amount. In the result, this civil miscellaneous appeal is allowed and the appellant being the Insurance Company is exonerated from the liability of paying the award amount to the claimants. Consequently, connected miscellaneous petitions are closed. No costs.