

(2011) 11 MAD CK 0252

In the Madras High Court

Case No : C.M.A. (MD) No. 684 of 2007 and M.P. (MD) No. 2 of 2007

V. Arumugasamy

APPELLANT

Vs

M. Valliammai and Others

RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

Citation : (2011) 11 MAD CK 0252

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : J. Anandkumar, for the Appellant; V.M. Balamohan Thampi, for Respondent R1 to R5 and Mr. J.S. Murali for Respondent 6, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice T. Mathivanan

1. This Civil Miscellaneous Appeal is directed against the award of Rs. 2,27,000/- dated 10.10.2001 and made in MCOP No. 99 of 2000 on the file of the learned Accident Claims Tribunal (Subordinate Court), Devakottai. The appellant herein is the respondent in the claim petition. Whereas the respondents 1 to 5 are the claimants. Originally, the 6th respondent Insurance Company was not impleaded as a party to the claim proceedings. It has been impleaded, vide the order of the court, dated 24.09.2007 and made in M.P. (MD) No. 3 of 2007. The respondents 1 to 5/claimants have preferred the said claim petition before the learned Motor Accident Claims Tribunal, (Subordinate Court), Devakottai, claiming a sum of Rs. 5,00,000/- for the death of the husband of the first respondent and the father of the claimants 2 and 3 and the son of the 4th and 5th claimants, in a road traffic accident said to have been taken place on 7.4.1995 at about 8.30 a.m. at Tenaru palam, Devakottai, involving the tractor and trailer bearing registration No. TN-67-Z-2018 and TN-67-Z-2019 respectively. Unfortunately, the Insurance Company, in which the tractor and trailer were insured at the relevant period has not been impleaded as a party to the proceedings.

2. The appellant herein being the respondent in the claim petition has contested the claim on various grounds.

3. Ultimately, on appraising the evidences on record, both oral and documentary, the learned Motor Accident Claims Tribunal has passed an award of Rs. 2,27,000/- directing the respondent, being the owner of the tractor and trailer to pay this amount to the respondents/claimants with interest at the rate of 9% per annum from the date of claim petition till the date of realisation within a period of one month. Being aggrieved by the award of the learned Tribunal, the respondent stand before this court.

4. It is pertinent to note here that the accident was taken place on 7.4.1995. The award was passed on 10.10.2001. Unfortunately, the appellant being the owner of the vehicle has failed to disclose the fact that his tractor and trailer were insured with the 6th respondent, who has been impleaded in this appeal presently. However, the learned Tribunal has lost sight on this issue and only during the course of pendency of this appeal, the appellant has filed a petition in MP (MD)No. 3 of 2007 saying that the tractor and trailer bearing registration No. TN-67-Z-2018 and TN-67-Z-2019 were insured with the 6th respondent at the relevant period and hence, unless and until, the matter is remitted back to the learned Claims Tribunal, after giving an opportunity to the 6th respondent Insurance company, to put forth its claim, there may not be any fair decision.

5. When the appeal came up for admission, the appellant has filed a petition in M.P. (MD) No. 3 of 2007 to implead the National Insurance Company Ltd., as the 6th respondent to answer for the claim of the respondents, as the vehicle was insured with it.

6. This court has considered the said application, even at the time admission and ordered for impleadment of the Insurance Company as 6th respondent.

7. Now the learned counsel appearing for the appellant and the learned counsel for the respondents 1 to 5 have jointly submitted that the claim petition be remitted back to the learned Tribunal, after setting aside the award and the learned Tribunal be directed to dispose the claim petition in MCOP No. 99 of 2000 afresh after giving an opportunity to the 6th respondent Insurance Company to put forth its contention.

8. This court has also considered the submission made by the learned counsels appearing for the appellant as well as the respondents 1 to 5.

9. Mr. J.S. Murali, the learned counsel has entered appearance on behalf of the 6th respondent and his submission has also been considered.

10. While advancing his argument, Mr. J.S. Murali, the learned counsel appearing for the 6th respondent has submitted that though the accident was taken place on 17.04.1995, the closure of the accident was made only in the year 2000.

11. He has also added that in view of the order passed by this court, dated

24.09.2007 and in made in M.P. (MD) No. 3 of 2007 in CMA (MD) No. 684 of 2007, the Insurance Company has been impleaded as 6th respondent only recently and therefore, the Insurance Company viz., the 6th respondent is not liable to pay interest from the date of claim petition till the date of its impleadment. Because the laches is only on the part of the owner of the vehicle as well as the respondents 1 to 5.

12. The submission made by the learned counsel appearing for the 6th respondent has also been considered. However, it is left open to the 6th respondent to put forth its contention before the learned Tribunal at the time of filing of its counter.

13. After taking into consideration of the related facts and circumstances of this case, this court is inclined to allow the appeal and remit the claim petition back to the learned Tribunal, after setting aside the award passed by the learned Tribunal against the appellant.

14. In the result, this Civil Miscellaneous Appeal is allowed and the award, dated 10.10.2001 and made in MCOP No. 99 of 2000 passed by the learned Tribunal is set aside and the claim petition in MCOP No. 99 of 2000 is remitted back to the learned Tribunal for fresh disposal.

15. The learned Tribunal is directed to provide adequate opportunity to the parties concerned to adduce their respective evidences, in addition to the evidence already adduced, especially the 6th respondent Insurance Company shall be given an opportunity to put forth its contention and after hearing both parties and on appreciation of the evidences, the claim petition to be disposed of within a period of three months from the date of receipt of a copy of this order, on day to-day basis, without further loss of time. Consequently, connected Miscellaneous Petition is closed. No costs.