IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 04-09-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.2022 OF 2015

The Divisional Engineer,
The Oriental Insurance Co.Ltd.,
Shankar House, No.1, RMV Extension,
Mekhri Circle, Bangalore-560 030.

C/o.The Branch Manager,
M/s.Oriental Insurance Co.Ltd.,
Ground Floor, Arunagiri Complex,
Bye Pass Road, Hosur-635 109. ... Appellant/2nd Respondent

-vs-

1.Govindaiah
2.Venkatamma
3.Srikantha
4.Indu Shree (Minor),
(represented by Mother and NF third respondent)
.. Respondents 1 to 4/Claimants

5.Munisamy Reddy ... 5th Respondent/1st Respondent.

Appeal against the judgment and decree, dated 12.12.2014, made in M.C.O.P.No.128 of 2012, on the file of Motor Accident Claims Tribunal, (Subordinate Court), Hosur.

For appellant : Mr.M.B.Raghavan

J U D G M E N T
(Judgment of the Court was delivered by S.Manikumar,J.)

Challenge in this appeal by Oriental Insurance Company Limited, Bangalore, appellant herein, is restricted only to the liability, fastened on the appellant insurance company, to pay Rs.13,14,500/-, with interest, at the rate of 7.5% p.a., from the date of claim till deposit.

2. The accident occurred on 17.04.2012 about 09.00 a.m., when the deceased Moorthy @ Chenna Keshava Moorthy was riding a TVS XL Moped

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bearing registration No.TN-70-7635 on Krishnagiri to Husor Main Road at Seetharam Ghat, Hosur, when the driver of the tipper lorry bearing registration No.KA-51-3747, insured with the appellant company, came in the same direction and dashed against the TVS XL Moped, from behind. The wheels of the tipper lorry ran over the deceased, and he died on the spot.

3. As regards the defence that the insurance company is not liable to pay compensation, before the Claims Tribunal, it has been contended by the appellant, that the driver of the tipper lorry, bearing registration No.KA-51-3747, and insured with the appellant company, did not possess a valid and effective driving licence on the date of accident. In support of the above contention, an Assistant of the Hosur Transport Office has been examined as R.W.1, who has deposed to the effect, that the driver of the tipper lorry did not produce the licence. R.W.1 has further deposed that he did not know the licence and batch numbers of the driver of the tipper lorry. He has also deposed as per the Motor Vehicles Inspector's Report, pertaining to the tipper lorry, Ex.P-4, dated 03.05.2012, licence particulars were not given. However, he has further deposed that as per Ex.P-6, he belongs to Tumkur District of Karnataka, and that the details of the driving licence can be verified only from the Transport Office, Tumkur District. R.W.1 has also deposed that insurance company had not taken any steps to verify, as to whether the driver of the tipper lorry did possess a valid and effective driving licence, obtained from the Transport Department, Tumkur District.

4. A perusal of the award shows that the appellant insurance company has not taken any steps to examine the driver of the tipper lorry, through Court. Ex.R-6 is the investigation report, produced before the Claims Tribunal by R.W.2, Deputy Manager of the appellant insurance company. In the absence of taking any steps through Court to examine the driver of the tipper lorry, bearing registration No. KA-51-3747, and to ascertain from the Transport Office of Tumkur District, where the driver of the said lorry was stated to be a resident, the Claims Tribunal came to the conclusion that the appellant insurance company has failed to substantiate the contentions, that, at the time of accident, the driver of the tipper lorry, insured with the appellant company, did not possess a valid and effective driving licence, so as to extricate itself from the liability, to pay compensation, or for that matter, to seek for any order of recovery of payment of the compensation, determined by the Claims Tribunal.

5. Though Mr.M.B.Raghavan, learned counsel for the appellant insurance company has assailed the correctness of the finding, fixing liability to pay compensation, on the grounds that the Claims Tribunal has failed to appreciate that there is no evidence of the driver having possessed any licence, and also contended that the appellant insurance company has discharged its burden of proof

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through oral and documentary evidence adduced before the Tribunal, including that of R.W.1, Assistant of the Transport Department, for the reasons recorded supra, this Court is not inclined to accept the said contentions.

6. At this juncture, this Court deems it fit to consider a decision made in ICICI Lombard General Insurance Company Vs. Annakkili, reported in 2012 (1) TN MAC 226, wherein this Court, following the principles of law laid down by the Apex Court and the Division bench judgments that payment of compensation to a third party victim or legal representatives of the deceased, as the case may be, being statutory and considering the interpretation given by the Supreme Court to Sections 147, 149 (4) and (5) vis-a-vis the defences open to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act and by holding that the very introduction of the words, "pay compensation to the third party and recover the same from the insured" in Section 149(4) and (5) of the Act, would reflect the divine intention of the legislature to protect the interest of the third parties, vis-a-vis inter-se disputes between the insured and insurer, held that the insurer cannot avoid its liability to pay compensation to a third party, but such avoidance can be made only, if willful breach of terms and conditions of the policy by the insured, by consciously and recklessly allowing the driver, who did not possess a valid and effective driving licence, to drive the vehicle and even if such breach is proved, payment of compensation to the third party victim cannot, at any stretch of imagination, be avoided by the Company and that the only remedy open to the insurer in law is to pay the compensation to the third party victims and recover from the insured. In view of the above, the insurer cannot be totally exonerated from payment of compensation to third party, but it can avoid its liability only to the insured.

7. In a recent decision in S.Iyyapan v. United India Insurance Co. Ltd., reported in 2013 (7) SCC 62, the Supreme Court, while dealing with the similar contentions and after considering a catena of decisions, at Paragraph 17, held as follows:

> "Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."

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8. For the above reasons, this Court is of the view, that there are no merits in this appeal, warranting interference with the impugned award. Therefore, the award, in all respects, is confirmed. Appeal is dismissed, without costs.

9. Consequent to the dismissal of this appeal, the appellant insurance company is directed to deposit the entire award amount, with interest at the rate of 7.5% per annum from the date of claim till realisation with costs, less the statutory deposit of Rs.25,000/-, to the credit of M.C.O.P.No.128 of 2012, on the file of Motor Accident Claims Tribunal, (Subordinate Court), Hosur, within a period of four weeks from the date of receipt of a copy of this judgment. Consequently, the connected M.P.No.1 of 2015 is closed.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
(Subordinate Court),
Hosur.

+ 1 cc to Mr.M.B.Gopalan, Advocate SR 48496

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