IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 03.07.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.Nos.257 & 1397 of 2015
and
M.P.Nos.1 of 2015 and 2 of 2015

C.M.A.No.257 of 2015

M/s.Bajaj Allianz General Insurance Co.Ltd.,
No.25/26, Prince Tower, IV Floor,
College Road, Nungambakkam,
Chennai ...Appellant/2nd respondent

vs.

1.M.Vijaya
2.M.Baskar
3.Deepa
4.Sudha.M
5.S.Parthipan ...Respondents/ Petitioners 1 to 4/ 1st Respondent

Prayer: Civil Miscellaneous Appeal is filed to set aside the award dated 13.08.2014 passed in MCOP No.843 of 2009 on the file of the Motor Accidents Claims Tribunal(Chief Judge, Court of Small Causes), Chennai.

C.M.A.No.1397 of 2015

1.Vijaya
2.M.Baskar
3.Deepa
4.Sudha ...Petitioners/Appellants

vs.

1.S.Parthipan
2.M/s.Bajaj Allianz General Insurance Co.Ltd.,
No.25/26, Prince Tower, IV Floor,
College Road, Nungambakkam,
Chennai ...respondents/ Respondents

(Since R1 remained exparte before the Tribunal
her presence may be dispense with)

Prayer: Civil Miscellaneous Appeal is filed to enhance the award dated 13.08.2014 passed in M.A.C.T.O.P No.843 of 2009 on the file of the Motor Accidents Claims Tribunal(Chief Judge, Court of Small Causes), Chennai.

C.M.A.No.257 of 2015

For appellant : Mr.Srinivasan Ramalingam
For RR1 to 4 : Mr.F.Terrychellaraja
For R5 : No appearance.

C.M.A.No.1397 of 2015

For appellant : Mr.F.Terrychellaraja
For R2 : Mr.Srinivasan Ramalingam

JUDGMENT

(Judgment of the Court
delivered by T. MATHIVANAN, J.)

Civil Miscellaneous Appeal No.257 of 2015 has been filed by the Insurance Company challenging the award dated 13.08.2014 and made in claim petition in M.A.C.T.O.P No.843 of 2009 on the file of the Motor Accidents Claims Tribunal(Chief Judge, Court of Small Causes), Chennai.

2. Civil Miscellaneous Appeal No.1397 of 2015 has been filed by the claimants 1 to 4, who are the wife and children of the victim, seeking enhancement of compensation.

3. With the issue involved in both the appeals is one and the same, they were consolidated together, heard jointly and disposed of in this common judgment.

4. For the sake of convenience and for easy reference, the appellants in CMA No.1397 of 2015 may hereinafter be referred to

as the claimants. Whereas, the appellant/Insurance Company in CMA No.257 of 2015, who is the second respondent in the claim petition be referred to as the second respondent, where ever the context so require.

5. Heard Mr.Srinivasan Ramalingam, learned counsel appearing for the second respondent/Insurance Company and Ms.M.Malar, learned counsel appearing for the claimants.

6. The claimants 1 to 4 had moved the Motor Accidents Claims Tribunal(Chief Judge, Court of Small Causes), Chennai with the claim petition in MCOP No.843 of 2009 claiming a sum of Rs.80,00,000/- towards the loss of death of one Madhavan, S/o.Varadhan, who is none other than the husband of the first claimant and father of the claimants 2 to 4 herein.

7. According to the claimants, on 25.09.2008 at about 8.30p.m. the deceased Madhavan was standing at GST Road, opposite to Vandalur Railway Station, when a Mini Bus bearing Registration No.TN-31-Y-9660 belonging to the first respondent had hit against him.

8. On account of this road traffic accident, the said Madhavan had succumbed to fatal injuries instantaneously on the spot.

9. The claimants have contended that the accident was taken place solely due to the rashness and negligence on the part of the driver of the Mini Bus. This claim petition was resisted by the second respondent/Insurance Company by filing their counter statement.

10. The first respondent in the claim petition being the owner of the offending vehicle had not chosen to contest the claim petition as he remained exparte.

11. In order to substantiate their case, the first claimant Tmt.Vijaya had examined herself as PW1. One Mr.Kumar and Thiru Ekambaram were examined as PW2 & 3 respectively. During the course of their examination, Ex.P1 to Ex.P10 were marked. On the other hand one Mr.Poomalai, who is the legal officer attached to the second respondent/Insurance Company was examined as RW.1. During the course of his examination, Ex.R1 to Ex.R9 were marked.

12. On appreciation of evidences both oral and documentary, the claims Tribunal had proceeded to pass an award to the extent of Rs.19,30,200/- on all heads. Having been aggrieved by the award dated 13.08.2014, the second respondent/Insurance Company had preferred this civil miscellaneous appeal No.257 of 2015 and the claimants, having not satisfied with the award passed by the claims Tribunal, have filed the appeal in CMA No.1397 for enhancement of compensation.

13. Mr.Srinivasan Ramalingam, learned counsel appearing for the second respondent/Insurance Company has confined his arguments on the ground of liability as the Driver of the offending vehicle was not holding valid Driving Licence at the relevant point of time.

14. On perusal of the counter statement as well as the additional counter statement of the second respondent/Insurance Company, this Court finds that the Insurance Company had taken its stand that the driver of the offending vehicle was not duly licenced to drive the class of vehicle at the relevant point of time. The Insurance Company has also taken a stand that the driver had not produced his driving licence before the concerned Police Authorities at the time of verification.

15. This particular stand was taken into consideration by the claims Tribunal and formulated issue as a second one among three points for consideration. With reference to point No.2 i.e., ''whether the driver of the first respondent was holding valid driving licence at the time of accident?'' The claims Tribunal has delved deep into the materials available on record and found that the driver of the offending vehicle was having driving license at the time of accident.

16. On perusal of the records, it is understood that the Mini Bus bearing Registration No.TN-31-Y-9660, belonging to the first respondent was duly insured with the second respondent/Insurance Company at the material time. This has not been denied by the Insurance Company.

17. One Mr.K.Poomalai, legal Officer attached to the second respondent/Insurance Company was examined as RW1. He has fairly admitted that the Mini Bus was insured with the second respondent/Insurance Company but, as afore stated, they would contend that since the first respondent's driver was not having valid driving licence to drive the vehicle at the time of occurrence, the second respondent/Insurance Company was not at

all liable to pay the compensation as the first respondent being the owner of the offending vehicle had violated the policy conditions.

18. In this connection, Mr.Srinivasan Ramalingam, learned counsel appearing for the second respondent/Insurance Company has adverted to that the second respondent/Insurance Company had sent notices to the first respondent(owner of the vehicle as well as to his driver) namely one Mohan Raj. It is obvious that these notices were sent to them through the Court. While the first respondent had received the notice, the notice sent to his driver was returned with an endorsement as "no such addressee". Ex.R7 is the copy of the notice sent to the driver of the first respondent.

19. It is also revealed that the second respondent/Insurance Company had written a letter to the Regional Transport Officer, Theni, Theni District calling upon him to produce the driving licence of the driver of the first respondent. But the said Regional Transport Officer, Theni had sent a letter Ex.R8, saying that the driver of the first respondent was not issued with any licence. Ex.R9 is the Returned envelope containing the copy of a letter sent to the driver of the first respondent. It is pertinent to note here that the copy of the Insurance Policy in respect of the offending vehicle, was marked as Ex.R6.

20. In this connection, the claims Tribunal has observed, that the Regional Transport Officer, Theni had stated in Ex.R8, that no driving licence was issued to the driver namely Mohan Raj, S/o.Subbaiah, residing at No.7/26, Keezha Theru, Periakulam, Karunkunnam Post, Tirunelveli. It is to be noted here that the addressee i.e., the driver of the first respondent namely Mohan Raj, S/o.Subbaiah appears to have been residing at No.7/26, Keezha Theru, Periakulam, Karunkunnam Post, Tirunelveli.

21. The claims Tribunal has also raised a question that when the first respondent's driver has been residing at Tirunelveli, how the Regional Transport Officer, Theni could have got jurisdiction over the residential area of the first respondent?. As rightly observed by the Tribunal, this position has not been clarified by the learned counsel appearing for the second respondent/Insurance Company. It is also significant to note here that the driver of the first respondent was charge sheeted only for the offence under Sections 279 and 304(A) of IPC. But, he was never charge sheeted for the offence of non possession of the driving licence at the time of occurrence.

Based on the above facts, the claims Tribunal has come to the conclusion that there were reasons to believe that the driver was having valid driving licence at the time of occurrence.

22. Section 149 of Motor Vehicles Act 1988 contemplates the duty of insurers to satisfy judgments and awards against persons insured in respect of the third party risks. The insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum insured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgment. As per Sub section (2), Section 149 of the Act, the insurer shall be entitled to be made a party in the claims proceedings and to defend the action on any of the following grounds namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification.

23. In this connection, we would like to seek the assistance of the decision of the Apex Court in S.Iyyappan Vs. M/s. United India Insurance Company Ltd and another(Civil appeal No.4834 of 2013(Arising out of Special Leave Petition(Civil) No.5091 of 2009).

(Decided on July 1, 2013)

In this case, the Apex Court in Paragraph Nos.17 and 18 has observed as under:-

> Para17: The heading ''Insurance of Motor Vehicles against Third Party Risks'' given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation,

> the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.
>
> Para 18: Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. 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.

As observed by the Apex Court in the above decision, it is a statutory right of the claimants to recover an amount of compensation so awarded from the insurer and it is for the insurer to proceed against insured for a recovery of the amount in the event, there has been violation of condition of the Insurance Company.

24. As afore stated in the opening paragraphs, Mr.Srinivasan Ramalingam, learned counsel appearing on behalf of the Insurance Company has restricted his argument on the ground of liability alone alleging that the driver of the offending vehicle was not holding valid driving licence. Since the second respondent/Insurance Company has not substantiated their stand to the satisfaction of the Tribunal, we find that the contention of the second respondent/Insurance Company is not discernible.

25. In other aspects, based on Ex.P9 Wage slip, the claims Tribunal has determined the monthly income of the deceased at Rs.12,000/-. Towards future prospects, the Tribunal has also taken into account of 30% of this amount, which is calculated at Rs.3600/-. Totally, it comes to Rs.15,600/-. Deducting $1/4^{th}$ towards the personal expenses of the deceased, the $3/4^{th}$ remainder would be Rs.11,700/-.

26. Since the deceased was aged about 45 years at the time of occurrence, the Tribunal has selected the multiplier of 13 and accordingly calculated the life dependency of the family at Rs.18,25,200/-.

Besides this, the Tribunal has also granted compensation under the following heads:

(1). Loss of consortium to the first claimant	Rs.25,000/-
(2). Loss of love and affection as for each of the claimants(10000x4)	Rs.40,000/-
(3) Loss of Estate	Rs.10,000/-
(4) Funeral Expenses	Rs.25,000/-
(5) Transport Expenses	Rs. 5,000/-
Total	Rs.1,05,000/-

In all the Tribunal has awarded a sum of Rs.19,30,200/-.

27. When we consider the compensation passed by the Tribunal towards loss of consortium as well as towards loss of love and affection, we find that those amounts are completely disproportionate. The award of Rs.25,000/- towards loss of consortium is completely in sufficient and disproportionate and therefore we enhance to Rs.1,00,000/-. Similarly, the award of Rs.10,000/- towards loss of love and affection for each of the four legal heirs, wife and three children is wholly inadequate and therefore, we make it as Rs.25,000/- per head. In all other aspects, we do not want to interfere with the award passed by the Tribunal and hence we confirm the same. However, we would like to point out that the award will be in the nature of pay and recovery and the second respondent/Insurance Company will be entitled to recover the same from the fifth respondent herein, who is the owner of the offending vehicle.

28. In the result, the appeal filed by the second respondent/Insurance Company is disposed of. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

dn

To

1. The Chief Judge
Court of Small Causes
Motor Accident Claims Tribunal
Chennai

2. The Section Officer
VR Section,
High Court, Madras

1 cc to Ms.M. Malar, Advocate, Sr. 343286
1 cc to Mr.SRinivasan Ramalingam, Advocate, Sr. 33126

C.M.A.Nos.257 & 1397 of 2015
and
M.P.Nos.1 of 2015 and 2 of 2015

GJ (CO)
kk 18/1