IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.08.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

C.M.A. NO. 3962 OF 2008

M/s. National Insurance Co. Ltd.
Cuddalore. .. Appellant/2nd Respondent

- Vs -

1. Mr. Babu ..1st Respondent/Claimant

2. Mr. Gulbahar ..2nd Respondent/2nd Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.09.2007, passed by the Motor Accident Claims Tribunal (Addl. District Judge), FTC II, Cuddalore, made in MCOP No.417 of 2005.

For Appellant : Mr. J.Chandran

For Respondents: Mr. N.R.Rajagopalan for R-1
Exparte.

JUDGMENT

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent. There is no representation for the second respondent.

2. The appeal has been filed by the insurer of the vehicle, viz., National Insurance Company, challenging the award dated 20.09.07 passed by the Motor Accidents Claims Tribunal (Addl. District Judge), FTC-II, Cuddalore, made in M.C.O.P. No.417 of 2005, fixing the liability on the insurer.

3. It is a case of injuries sustained by the first respondent in an accident that happened on 21.8.02. On 21.8.02, at about 09.30 a.m., when the first respondent, Babu was proceeding to work on his bicycle and towards north on the Cuddalore-Chidambaram Main Road, the car, bearing Regn. No.TME-1377, belonging to the second respondent, driven in a rash and negligent manner, hit the cycle of the first respondent and as a result of the accident, the first respondent suffered fractures on various parts of the body and also sustained other injuries.

The first respondent was admitted as in-patient at the Government Hospital at Cuddalore, where he took treatment. A case was registered against the driver of the car by the Thirupapuliyur Police Station. The first respondent herein, who suffered injuries in the accident, claimed compensation in a sum of Rs.3,00,000/-.

4. In support of the claim, the first respondent examined himself as P.W.1 and one Dr. S.K.I.Raju as P.W.2 and Exs.P-1 to P-8 were marked, the details of which are as follows:-

Ex.P-1	-	First Information Report
Ex.P-2	-	Copy of Accident Register
Ex.P-3	-	Report of the Motor Vehicle Inspector
Ex.P-4	-	Insurance copy for the period 15.5.02 to 14.5.03
Ex.P-5	-	Medical Receipt for the period 21.8.02 to 25.8.02
Ex.P-6	-	Copy of Identity card
Ex.P-7	-	Disability Certificate
Ex.P-8	-	X-ray

5. The Insurance Company examined two witnesses, viz., R.W.1 - Sivakumar, Assistant and R.W.2 - Dr. S.Natarajan and marked Exs.R-1 and R-2, the details of which are as under :-

Ex.R-1	-	Copy of Driving Licence
Ex.R-2	-	Opinion offered by Dr.Natarajan, Asst. Professor, Arupadai Veedu Medical College, Pondicherry.

6. The Tribunal, based on the oral evidence of the witnesses, the F.I.R. and also taking note of the corroborating evidence of P.W.2 as also the injuries sustained by the first respondent resulting in disability, and also taking into account the documentary evidence, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the car and, therefore, the liability was fixed on the second respondent herein viz., the owner of the car and consequently the appellant, viz., the insurer of the car, was directed to compensate the first respondent.

7. Insofar as negligence is concerned, learned counsel for the appellant has no serious objection with regard to the finding of the Tribunal and further no material has also been placed before this Court to come to a different conclusion than the one arrived at by the Tribunal.

8. The Tribunal, on considering the evidence, both oral and documentary, awarded the compensation under the following heads :-

Sl. No.	Head	Amount granted by the Tribunal
1	Transportation Expenses	Rs.5,000/-
2	Extra Nourishment	Rs.2,000/-
3	Medical Expenses	Rs.10,000/-
4	Pain & Suffering	Rs.15,000/-
5	Permanent Disability @ 45%	Rs.45,000/-
6	Loss of Income	Rs.10,000/-
	Total	Rs.87,000/-

In all, the Tribunal awarded a sum of Rs.87,000/- towards the claim as made by the first respondent along with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till the date of payment.

9. The only serious issue raised by the appellant/insurance company in the present appeal is that the driver of the vehicle did not have a valid driving licence on the date when the accident occurred. It is the submission of the appellant/insurance company that the driver of the vehicle not having valid driving licence on the date of the accident, the appellant/insurance company cannot be fastened with the liability to pay the amount awarded.

10. On a careful consideration of the entire materials available on record, this Court is of the considered opinion that the said contention of the appellant/insurance company deserves to be sustained. The Tribunal itself has given a categorical finding that the driver of the vehicle did not have a valid driving licence on the date of the accident and the validity of the licence of the driver was only from 7.4.2003 to 6.4.2006 and there is no valid driving licence prior to the said period. However, the contention of the appellant/insurance company that the insured vehicle has been driven by a person, who has no valid driving licence and, hence, the appellant/insurance company is not liable to pay, does not appeal to this Court in its entirety.

11. In the above backdrop, useful reference could be made to the decision of the Apex Court in National Insurance Co. Ltd. - Vs - Kusum Rai & Ors. (2006 (2) CTC 347), wherein the decision in National Insurance Co. Ltd. - Vs - Swaran Singh & Ors. (2004 (3) SCC 297 :: 2004 ACJ 1 :: 2004 (1) Supreme 243), has been considered, wherein the insurer has been permitted to pay the

amount and, thereafter, recover the amount from the owner of the vehicle in case of breach of policy conditions. The relevant portion of the order is extracted hereinbelow for better clarity :-

> "10. We have noticed hereinbefore that the Tribunal has not gone into the said question. It proceeded on the basis that the case was covered by Kamla (supra). The correctness of the said decision came up for consideration before this Court in National Insurance Co. Ltd. - Vs - Swaran Singh & Ors., 2004 (3) SCC 297, wherein this Court clearly held:
>
> > "The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle, admittedly, did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand in it at all e.g., a case where an accident takes place owing to a mechanical fault or vis major. (See Jitendra Kumar)"

12. In view of the above decision of the Supreme Court in Kusum Rai's case (supra), this Court is of the considered view that the driver of the vehicle having no valid driving licence on the date of the accident, it is apparent that there is a breach of condition of the policy. Though the insurance company is not liable to pay the compensation, there being a breach of policy condition, however, following the decision of the Supreme Court above, the insurance company is directed to pay the first respondent the award amount as ordered by the Tribunal and, thereafter, recover the same from the owner of the vehicle in accordance with law.

13. Accordingly, this Civil Miscellaneous Appeal is disposed of confirming the award passed by the Tribunal. It is stated that the appellant has deposited only a sum of Rs.25,000/=, to

the credit of MCOP No.417/2005, at the time of filing this appeal. In view of this Court confirming the award, the appellant/insurance company is directed to deposit the entire award amount, less the amount already deposited, along with interest at the rate of 7.5%, as ordered by the Tribunal, from the date of the claim till the date of deposit to the credit of MCOP No.417/2005 within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent herein is permitted to withdraw the entire award amount. The appellant/insurance company shall settle the claim of the first respondent/claimant as ordered above and liberty is granted to the appellant/insurance company to recover the amount paid to the first respondent from the owner of the vehicle, viz., the second respondent. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

GLN

To

1. The Addl. District Judge (Motor Accident Claims Tribunal) Fast Track Court II, Cuddalore.

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

+1 cc to Mr.J.Chandran, Advocate, sr.45639

C.M.A. NO. 3962 OF 2008

gr co
kra 29/10/2015