IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.Nos.2111 and 2112 of 2016
and
C.M.P.Nos.15282 and 15284 of 2016

The Branch Manager
The New India Assurance Co. Ltd.
KIADB Complex, First Floor, Hosur Main Road
Bommasandra
Bommasandra Industrial Estate
Bangalore .. Appellant in both Appeals/ 2nd Respondent

versus

1.Rajappa @ Rajappan
2.Rani
3.M.Sakthivelu .. Respondents in C.M.A.No.2112/2016/ Petitioners 1 & 2 and 1st Respondent

1.V.Gopal
2.Venkatalakshmi
3.Lakshmammal
4.M.Sakthivelu .. Respondents in C.M.A.No.2111/2016/ Petitioners 1 to 3 and 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accident Claims Tribunal (Special Court for Motor Accident Claims Cases) at Krishnagiri, dated 31.3.2015 in M.A.C.T.O.P.No.461 of 2013.

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accident Claims Tribunal (Special Court for Motor Accident Claims Cases) at Krishnagiri, dated 31.3.2015 in M.A.C.T.O.P.No.411 of 2013.

For Appellant :Mr.M.Krishnamoorthy
Standing Counsel
for New India Assurance Co. Ltd.

COMMON JUDGMENT
(made by S.MANIKUMAR, J.)

Arising out of an accident, which occurred on 16.11.2011, about 4.30 p.m, a Tata Sumo vehicle bearing Regn. No.KA-21 /M 2433, belonging to M.Sakthivelu/3rd Respondent in C.M.A.No.2112/2016 and 4th Respondent in C.M.A.No.2111/2016, and insured with New India Assurance Co. Ltd., Bommasandra, Bangalore (appellant herein), driven in a rash and negligent manner, by his driver, dashed against a pedestrian, who was walking on the left side of Hosur to Rayakottai Road, and lost control of the vehicle, dashed against a road side tamarind tree. Rajeswari, who was travelling in the Tata Sumo van, sustained grievous injuries and she died on the spot. Madhesh, brother of Rajeswari, who also sustained injuries, died on the way to the hospital. One Sakthivel also died. Some others were injured. In this regard, a case in Crime No.167/2011 under Sections 279, 337 and 304-A IPC has been registered against the driver of the Tata Sumo van bearing Regn. No.KA 21/M 2433 on the file of Uddanapalli Police station. For the death of Shivakumar, legal representatives filed MCOP No.411/2013 on the file of Motor Accident Claims Tribunal (Special Court for Motor Accident Claims cases), Krishnagiri, claiming compensation of Rs.10,00,000/-.

2. For the death of Rajeswari, parents have filed MCOP No.461/2013 claiming compensation of Rs.7,00,000/-. For the death of Madhesh, parents have filed MCOP No.462/2013 claiming compensation of Rs.7,00,000/-. There was another claim petition, MCOP No.412/2013.

3. As facts and evidence are common, the Tribunal, jointly tried the above motor accident claims petitions. On behalf of the claimants, three witnesses have been examined, as PWs.1 to 3 and five documents have been marked as Exs.P1 to P5. Ex.P1 is the photocopy of FIR, Ex.P2 is the photocopy of the Postmortem certificate for the deceased G.Shivakumar, Ex.P3 is the photocopy of the insurance policy of Tata Sumo bearing Registration No.KA.21/M.2443, Ex.P4 is the photocopy of the School certificate of the deceased G.Shivakumar and Ex.P5 is the legal heir certificate of the claimants therein. Owner of the Tata Sumo vehicle, M.Sakthivelu/3rd respondent in CMA No.2112/2016 and 4th respondent in CMA No.2111/2016, remained ex-parte. New India Assurance Company Limited, Bommasandra, has examined a Senior Assistant of the company as RW1 and three documents have been marked as Exs.R1 to R3 on their side. Ex.R1

is the photocopy of the insurance policy of Tata Sumo vehicle bearing Regn. No.KA 21/M 2443; EX.R2 is the notice issued by the insurance company to the owner of the vehicle and Ex.R3 is the returned postal cover from the owner.

4. Evaluating the pleadings and evidence, the Claims Tribunal, held that the driver of the Tata Sumo vehicle, bearing Regn. No.KA 21/M 2443, insured with the appellant herein, was negligent in causing accident. On the plea of the New India Assurance Co. Ltd, that at the time of accident, the driver of the vehicle did not possess a valid and effective driving licence, and there was a violation of policy condition and that therefore, the Insurance Company is not liable to pay compensation, the Tribunal, by observing that the notice, Ex.R2 has been returned as unserved, with a postal endorsement "insufficient address" and therefore, it cannot be presumed that the driver of the offending vehicle, did not have a valid and effective driving licence, rejected the defence of the insurance company.

5. Further, by observing that the victims are third parties to the policy of insurance, quantified the compensation on the pleadings and materials on record. The quantum of compensation awarded in each of the claim petition, is tabulated hereunder:

Sl. No.	MCOP Number/CMA Number	Compensation Amount
1	MCOP No.411/2013 / C.M.A.No.2112/2016	Rs.12,32,000/-
2	MCOP No.461/2013 CMA No.2111/2016	Rs.5,20,000/-
3	MCOP No.462/2013	Rs.5,20,000/-

6. Being aggrieved by the liability fastened on New India Assurance Company Limited, to pay compensation, instant appeals have been filed.

7. At the outset, Mr.M.Krishnamoorthy, learned standing counsel for the appellant, submitted that the quantum of compensation in each of the claim petitions, is not disputed. Submission is placed on record. On the above prayer sought for in the appeals, before us, learned counsel for the appellant, submitted that the Tribunal, ought to have exonerated the insurance company and fastened liability on M.Sakthivelu, owner of the vehicle/3rd respondent in C.M.A.No.2112/2016 and 4th respondent in C.M.A.No.2111/2016, on the grounds that he had committed a breach of policy condition, by allowing a person, who did not possess a valid and effective driving licence to drive the vehicle. He further submitted that the Tribunal has not considered the evidence of RW1, Senior Assistant of the appellant company and Exs.R1 to R3; that steps have been taken to prove that, at the time of accident, the driver did not

possess a valid and effective licence. Learned counsel for the appellant submitted that Ex.R1 - copy of insurance policy marked by the Insurance company does not cover the occupants of the vehicle and that therefore, the Tribunal ought not to have fastened liability on the insurance company/appellant herein. Lastly, he submitted that the Tribunal has erred in ordering penal interest, at the rate of 9% per annum.

Heard Mr.M.Krishnamoorthy, learned standing counsel for the appellant and perused the materials available on record.

8. Though perusal of the counter affidavit filed by the appellant company before the Tribunal, shows that the Insurance company has contended that no premium was paid for the passengers, in Tata Sumo bearing Registration No.KA-21 / M 2443 and therefore, the insurance company was not liable to indemnify the owner of the vehicle, there is no specific plea by the insruance company, that Ex.P3-insurance policy marked by the claimants, does not cover passengers. Further, though the above said averments have been made in the counter affidavit, filed by the Insurance company, no oral evidence has been adduced by RW1, Senior Assistant of New India Insurance Co. Ltd./appellant herein.

9. It is well settled that courts/tribunals frame issues for adjudication, on the basis of specific pleadings and documents. In the case on hand, before the Tribunal there is no specific pleading by the insurance company/appellant, that Ex.P3 - Insurance policy, would not cover the passengers, and no evidence was also adduced by RW1, Senior Assistant of the Appellant/Insurance company, to that extent, and in such circumstances, we are of the view that, it would not be open to New India Assurance Co. Ltd., Bommasandra, to raise the said plea, by way of Memorandum of Grounds, by contending that the Tribunal has committed a mistake in fastening liability on the insurance company. The contention that the Tribunal, has failed to consider the said issue, can be raised, if only, there was any pleading and evidence, before the Tribunal, to that effect. From the materials on record, we are of the considered view that for the fault of insurance company, in not taking appropriate defence, the Tribunal cannot be said to have committed any mistake.

10. As regards the plea of exonerating New India Assurance Co. Ltd. from payment of compensation to the accident victims on the grounds that there was a violation of a policy condition by the owner of the vehicle/3rd respondent, in allowing, an unlicensed driver to drive the vehicle and that the further contention that the Tribunal has not properly assessed the evidence of RW1, Senior Assistant and Exs.R1 to R3, it could be seen from the material on record that the appellant/insurance

company has only sent Ex.R2 notice to the owner of the vehicle, which has also been returned with a postal endorsement (Ex.R3) "insufficient address". Insurance company has not taken any steps to summon the jurisdictional RTO or verified from records as to whether at the time of accident the driver of Tata Sumo vehicle, did possess a valid and effective driving licence. Evidence adduced is not sufficient to extricate the insurance company from payment of compensation. Right of recovery can be granted if only the insurance proved that there was no valid and effective licence. In the light of the above, we are not inclined to accept the contentions of the appellant.

11. The only question that remains to be considered is, "whether the Tribunal was right in awarding penal interest?" The Tribunal, while granting compensation has directed the appellant to deposit the award amount within a period of four weeks from the date of receipt of a copy of the order. In default, ordered that the award shall carry an interest, at the rate of 9% per annum. In Shanmughasundaram & Another v. Jothi & Others reported in 2005-1-L.W.-566, this court has held that while passing award, there is no statutory backing for addition of a default clause and accordingly deleted the same.

12. Going through the material on record, we are of the view that appellant/insurance company, has not substantiated any of the grounds raised, except penal interest. We are not inclined to interfere with the impugned judgment, except only to the limited extent of deleting the portion, relating to the penal interst.

In the result, appeals are allowed, in part, to the extent of deleting the penal interest awarded by the Tribunal. In all respects, the impugned common judgment is confirmed. Consequent to the disposal of these appeals,

i) Appellant/New India Assurance Co. Ltd., Bommasandra, Bangalore is directed to deposit a sum of Rs.12,32,000/- with interest, at the rate of 7.5% per annum with cost to the credit of MCOP No.411/2013.

ii) Appellant is further directed to deposit a sum of Rs.5,20,000/- with interest at the rate of 7.5% per annum to the credit of MCOP No.461/2013.

iii) The Tribunal is further directed to affix a copy of this judgment in the Notice Board of the Tribunal mentioning the name of the parties to MCOP Nos.411 and 461 of 2013 respectively, and the disposal of the appeals filed by New India Assurance Co. Ltd., Bommasandra, Bangalore.

iv) The Tribunal is further directed to disburse the compensation amount, only after due verification and identity of the claimants/respondents herein. We wish to state that, there should be strict compliance.

v) Deposit should be made within six weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected CMPs are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

Asr

Copy to:

Motor Accident Claims Tribunal
(Special Court for Motor Accident Claims Cases) at Krishnagiri.

+2cc to Mr.M. Krishna Moorthy, Advocate Sr. 54446,54447

C.M.A.Nos.2111 and 2112 of 2016

AD(CO)
VR(20/4/2017)