IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.889 of 2015

& M.P.Nos.1 and 2 of 2015

ICICI Lombard General Insurance Company Ltd.,
84/85, Arihant Plaza, Walltax Road,
Chennai - 600 003.
... Appellant/2nd respondent

vs.

1. P.Maheswari
2. Ramkumar (Minor)
3. Lakshmana Kumar (Minor)
4. K.Subbulakshmi
5. Prof. Dhanapalan College for Women,
   Old Mahabalipuram Road,
   Kelambakkam, Chennai - 600 117.

... Respondents/Petitioners 1 to 4 and Respondent No.1

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 24.10.2013 passed in M.C.O.P.No.158 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Thiruvallur Camp at Poonamallee.

For Appellant : Mrs.R.Sree Vidhya

For Respondents : Mr.K.Varadhakamaraj
for Mr.P.Selvaraj - R1 to R4
: Mr.T.G.Ravichandran - R5

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The insurance company has filed the appeal challenging the award dated 24.10.2013 passed in M.C.O.P.No.158 of 2011 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Thiruvallur Camp at Poonamallee.

2. On 11.11.2010, at about 9.00 am the deceased Perumalraja, Sub-Inspector of Police was on duty at Porur Junction. While regulating the traffic at the said junction, a private bus bearing Registration No.TN-07-U-4596 belonging to the fifth respondent, came in a rash and negligent manner and hit the deceased and caused fatal injuries. A sum of Rs.30.00 lakhs was claimed as compensation by respondents 1 to 4, who are wife, sons and mother of the deceased. The Tribunal awarded a sum of Rs.31,95,024/- with interest at 7.5% per annum.

3. The first respondent/claimant No.1, who is the wife of the deceased was examined as P.W.1. One Rajagopal, Inspector of Police was examined as P.W.2 to state about the salary particulars of the deceased, Manoharan, stated to be the eye witness to the accident, was examined as P.W.3 and one Govindan, Sub-Inspector of Police, who had investigated the case was examined as P.W.4. On behalf of the claimants, 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 the Accident Report;
Ex.P.3 - Post Mortem Certificate;
Ex.P.4 - Legal Heir Certificate;
Ex.P.5 - Salary Certificate;
Ex.P.6 - Identity Card;
Ex.P.7 - Copy of the Service Register;
Ex.P.8 - Driving Licence.

4. On behalf of the Insurance Company, Ravichandran, Regional Transport Officer was examined as R.W.1; Aravind Balaji, stated to be working as Manager Legal in the appellant Insurance Company, was examined as R.W.2 and Chandra, clerk in the office of the Regional Transport Office, Chengalpet was examined as R.W.3 and in support of their claim, Exs.R.1 to R.6 were marked.

Ex.R.1 - Transfer certificate with regard to the change of ownership
Ex.R.2 - Receipt with regard to the payment for change of permit
Ex.R.3 - Permit changed in the name of India Shoes Export
Ex.R.4 - Fitness certificate
Ex.R.5 - copy of the policy
Ex.R.6 - Certificate issued by RTO, Kancheepuram.

5. Before the Tribunal, the appellant insurance company inter alia contended that the deceased, while regulating the traffic came to the middle of the road without noticing the bus and hence the deceased alone was responsible for the accident. Therefore, they are not liabile to pay compensation.

6. After considering the oral and documentary evidence, the Tribunal awarded a sum of Rs.31,95,024/- with 7.5% interest per annum. The Tribunal held that the owner of the vehicle and the insurance company of the vehicle are jointly liable to satisfy the award.

7. The Tribunal in this case determined the income of the claimant at Rs.28,856/- per month and adopting "13" multiplier awarded a sum of Rs.31,05,024/- towards loss of income etc. The following amounts were granted as compensation with 7.5% interest:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income etc.	Rs.31,05,024/-
2	Funeral expenses and Transport	Rs. 15,000/-
3	Loss of Consortium to P.W.1	Rs. 25,000/-
4	Loss of love and affection	Rs. 50,000/-
	Total	Rs.31,95,024/-

8. Learned counsel appearing for the appellant submits that they are not disputing the quantum of compensation awarded by the Tribunal. The main contention raised by the learned counsel for the appellant is that there is no valid fitness certificate on the date of accident, i.e., 11.11.2010. Therefore, there is a breach of condition of the insurance policy. Therefore, the appellant insurance company is not liable to compensate the claimants and the liability is only on the owner of the vehicle, viz., the fifth respondent herein. The Tribunal though referred to the documents filed in support of their contention, it erred in passing the award directing to pay the amount jointly or severally. She also relied upon the judgment of the Honourable Supreme Court reported in 2013 ACJ 1944 (S.Iyyapan V. United India Insurance Co. Ltd. and another) and submitted that right to recover should be granted.

9. Mr.T.G.Ravichandran, learned counsel appearing for the fifth respondent submits that the fifth respondent is not the owner of the vehicle, as he had sold the vehicle to third party on 09.11.2010 itself. He further submits that such a change has been reflected in the R.C. Book and the transfer certificate with regard to ownership of the vehicle, which was marked as Ex.R.1 through R.W.1. He also submits that R.W.3 in her evidence has clearly stated that she did not know whether the name in the permit has been changed. He also submits that R.W.1 and R.W.3, in their evidence have not stated about the expiry of the fitness certificate and hence the date of transfer is 09.11.2010, two days prior to the date of accident, i.e.,

11.11.2010. Hence it is clearly established that the fifth respondent is not the owner of the vehicle on the date of accident and the appellant - Insurance Company has to implead the appropriate person for recovery of the amount. Therefore, the fifth respondent is not entitled to pay the compensation.

10. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials placed before this Court.

11. Even though the fifth respondent remained exparte before the Tirbunal, has entered appearance through counsel before this Court.

12. We find from the order of the Tribunal that even though the fifth respondent has sold the vehicle and an endorsement has been made in the fitness certificate, the change has not been made in all places; except in one place, the date of change of ownership is mentioned as 18.11.2010. Hence, the Tribunal gave a finding that on the date of accident, the fifth respondent was the owner of the vehicle and there was no material to show that it was sold to any other person.

13. We have perused Exs. R.1 and R.4 marked through R.W.2. The relevant portion of Ex.R.4 reads as follows:

"EDUCATIONAL INST BUS (HMV)/13476/2008
FORM 38
Certificate of Fitness (82(1))
Vehicle Number TN07U4596 is certified as complying with the provisions of Sec.58 of the Motor Vehicles Act, 1988 and the rules made thereunder.
The certificate will expire on 28-Jun-2010
Sd/-
Date: 20-Jun - 2009 Signature and Designation of Inspecting Authority

R.No.58565/01/2010
RTO (EAST) CHENNAI - 12
Transfer of Ownership - TN07U4596
Rs.300/F2455333/18-Nov-2010 - 125/-
Transferred to MS SRI KANDAN TRAVELS
S/o NA
166 BROADWAY
09.11.2010
CHENNAI with effect from ~~18-Nov-2010~~ AND THEN THE VEHICLE IN THE OWENER HAS ENTERED IN IN THE LEASE AGREEMENT WITH THE INDIASHOES EXPORTS. P. LTD. NO.151/14

MOUNT POONAMALLEE ROAD RAMAPURAM. CHENNAI - 89. AS TO OPERATE THE VEHICLE WITH P.S.V. PERMIT IN THE INDIA SHOES EXPORTS P. LTD. CH.89.

sd/- 3/12

ASST. REGISTERING AUTHORITY
CHENNAI (EAST) CHENNAI - 12
3/12/2010"

14. The above document clearly shows that the fitness certificate expired on 28th June, 2010. The transfer of ownership was made only on 18.11.2010 and in one place only, the date has been changed into 09.11.2010 and in other places, the date has not been changed. It is further seen that the said endorsement has been recorded by the Assistant Registering Authority on 03.12.2010. We find that the date 18.11.2010 has been struck off and written as 09.11.2010. However, insofar as the payment of fee for transfer of ownership, which is the relevant date, there is no change and the date is mentioned as "18-Nov-2010".

15. In view of the above document, we are not inclined to accept the contention of the fifth respondent that R.W.1 and R.W.3 have not stated in their evidence anything about the expiry of the fitness certificate. When there is a record, which clearly shows that the date of transfer is on 18.11.2010, recorded on 03.12.2010, and in one portion only the date was changed in 09.11.2010, we find no material to establish that the actual date of transfer of ownership is on 09.11.2010. The fifth respondent has not produced any document establishing the sale of the vehicle on 09.11.2010 before the Tribunal and even before this Court. On the face of the above-said document, we are of the opinion that the fifth respondent is the owner of the vehicle on the date of accident, i.e., on 11.11.2010.

16. As far as the recovery of compensation from the owner of the vehicle when there is a breach of policy condition, the Apex Court in the decision reported in 2013 ACJ 1944 (S.Iyyapan V. United India Insurance Co. Ltd. and another) held that the insurance company may proceed against the insured for recovery of amount if there is any violation of condition of insurance policy. The Apex Court after referring to the various decisions including the decisions in the case of National Insurance Co. Ltd., - vs. - Swaran Singh and others reported in (2004)3 Supreme Court Cases 297 = 2004 ACJ 1 = 2004(1) Supreme 243 and Kusum Rai's case (2006(2) CTC 347) held as follows:-

> "18. Reading the provisions of Section 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."
>
> (emphasis supplied)

17. Admittedly, in the instant case, the fitness certificate is not in force on the date of accident and had expired on 28th June, 2010. Hence, in view of the breach of policy condition, the appellant - Insurance company is entitled to recover the compensation from the fifth respondent, who is the owner of the vehicle.

18. Accordingly, this Civil Miscellaneous Appeal is partly allowed as follows:

(i) the compensation granted by the Tribunal in a sum of Rs.31,95,024/- with interest at 7.5% per annum is confirmed;

(ii) the appellant - Insurance Company is directed to pay the compensation to the claimants and recover the same from the fifth respondent herein;

(iii) it is open to the fifth respondent to contest his claim as against the transferor of the vehicle in the manner known to law;

(iv) it is stated that the appellant - Insurance Company deposited entire award amount of compensation as ordered by the Tribunal;

(v) this Court by order dated 09.10.2015 in M.P.No.2 of 2015, permitted the first and fourth respondent/wife and mother to withdraw 50% of their apportioned share;

(vi) the first and fourth respondent/wife and mother are permitted to withdraw their balance share amount;

(vii) the share of the minor claimants is directed to be deposited in any one of the Nationalised Bank which is very nearer to the Court below till the minor claimants attain majority;

(viii) there will be no order as to costs; and

(ix) consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
(Additional District Judge), Thiruvallur Camp
at Poonamallee.

2.The Record Keeper,
V.R. Section,
High Court,
Madras.

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.7353
+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.7098
+1cc to Mr.t.G.Ravichandran, Advocate sr.7357

C.M.A.No.889 of 2015
& M.P.Nos.1 and 2 of 2015

gj(CO)
srg(29/02/2016)