

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 26.10.2016

(Reserved on: 29.09.2016)

CORAM

THE HONOURABLE MR. JUSTICE **T.RAJA**

C.M.A. No.54 of 2014

The Branch Manager,
M/s.Oriental Insurance Co. Ltd.,
28, Salem Road, Coonoor.

... Appellant

Vs

1.Thiru R.Nagendran
2.Thiru S.R.Balasubramaniam

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 04.04.2013, made in M.C.O.P.No.67 of 2012, on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Tirupur.

For Appellant : Mr.J.Chandran

For R1 : Mr.Ma.P.Thangavel

For R2 : Dr.S.Padma

JUDGMENT

Aggrieved by the judgment and decree dated 04.04.2013, made in MCOP.No.67 of 2012, on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Judge, Tiruppur, in awarding a sum of Rs.7,97,735/- as against the claim of Rs.12,00,000/- for the injuries sustained by the claimant, the appellant-Insurance Company has filed the present appeal on the ground of liability and quantum.

2. Background of the facts in a nutshell are as follows:

On 02.08.2012, at about 8.30 hrs., while the claimant was walking on the road near his house from south to north of VOC Nagar, 1st street, Triupur, a vehicle bearing Registration No.TN-37-AP-0525 driven by the driver of the second respondent in a rash and negligent manner, dashed against the claimant and as a result, he sustained grievous injuries all over his body. Immediately after the accident, he was admitted in

Ganga Medical Centre and Hospital, Coimbatore, from 02.08.2012 to 16.08.2012. He claimed a sum of Rs.12,00,000/- as compensation.

3. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the second respondent and awarded a sum of Rs.7,97,735/- with interest at 7.5% per annum. Aggrieved by the same, the appellant / Insurance Company has filed the present appeal.

4. Learned counsel appearing for the appellant Insurance Company submitted that the vehicle involved in the accident bearing Registration No.TN-37-AP-0525 was not driven by the owner who has taken the insurance policy, instead it was driven by one Mr.Viswanathan who was holding learner's license, that too without having any instructor with him for assistance which is against the terms and conditions of the insurance policy. It is further submitted that prior to the accident i.e. on 02.08.2012, the owner of the vehicle/ second respondent herein sold the same to one Mr.Venkatachalam, on 08.02.2011 and thereafter, the vehicle

along with necessary forms for transfer were handed over to him, therefore, the Insurance Company is not liable to pay the compensation as the said vehicle sold to one Mr.Venkatachalam has not been properly intimated to them as required under the provisions of the Act. It is his further contention that unless it is proved by evidence that the vehicle has been transferred in the name of Venkatachalam, the provision of Section 149 of the Motor Vehicles Act would not be applicable, because, in the absence of such evidence on record, this Court should absolve the insurance company from the liability, hence, the award passed by the Tribunal in fixing liability on the Insurance Company is liable to be set aside, however, on the contrary, the owner of the vehicle should be made liable to pay the compensation.

5. Assailing the quantum of compensation awarded by the Tribunal, learned counsel for the appellant Insurance Company submitted that when there is no evidence to show that the claimant was working as Iron Master in Shanmuga Textiles, Tirupur, and was earning a sum of Rs.12,000/- per month, the Tribunal ought not to have fixed his monthly

salary at Rs.6,000/- per month at the rate of Rs.200/- per day. It is his further submission that as there is no functional disability for the claimant, merely accepting the disability certificate issued by the Doctor-P.W.3 certifying 75% disability, the Tribunal ought not to have awarded a sum of Rs.4,03,200/- towards disability, apart from awarding exorbitant amount under various heads. On this basis, he prayed for interference of the award passed by the Tribunal.

6. Learned counsel appearing for the owner of the vehicle / second respondent herein submitted that the second respondent is not the owner of the vehicle in question, as he had sold the vehicle to one Mr.Venkatachalam, residing at No.1, Ambal Theatre Back side, Singanallur, Coimbatore, on 08.02.2011, for a sum of Rs.1,50,000/- and on the same date, the vehicle along with necessary forms for transfer was signed and handed over to the said person, hence, she pleaded, the second respondent cannot be held for any liability on account of alleged rash and negligent driving of the driver/Viswanathan. It is her further contention that at the time of sale of the vehicle, the second respondent handed over

the valid Insurance policy to the transferee, therefore, the question of putting burden either to the second respondent or to the transferee to pay the compensation does not arise, hence, the appellant Insurance Company, to whom the vehicle was insured, is liable to pay the said compensation as awarded by the Tribunal, she pleaded. It is also her further contention that after the sale of the vehicle, the second respondent, vide letter dated 01.10.2012, intimated the Regional Transport Officer, Coimbatore, about the sale of the vehicle to one Mr.S.Venkatachalam and the said letter was also marked before the Tribunal as Ex.R5, therefore, she contended, the second respondent cannot be held responsible to pay the compensation as awarded by the Tribunal, instead, the appellant Insurance Company is liable to pay the compensation because on the date of accident, the insurance policy obtained by the second respondent is in force.

7. Learned counsel appearing for the claimant/first appellant herein submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and thereby it has awarded a just, fair and reasonable compensation. Hence,

the order of the Tribunal is in accordance with law and the same has to be confirmed. It is further submitted that the accident had occurred only due to the rash and negligent driving of the driver one Viswanthan and the said vehicle was duly insured with the appellant Insurance Company. Immediately after the accident, he took treatment at Ganga Medical Centre and Hospital, Coimbatore, in four spells between 02.08.2012 and 17.10.2012 as inpatient and during the said period, he underwent various surgeries and the Doctor-P.W.3, who examined the claimant, assessed the disability at 75%. Thus, he contended, the first respondent/claimant, being the Iron Master working in Shanmuga Textiles, Tirupur, is not be able to do his normal work as done before.

8. In support of his submissions, he has also relied upon a judgment of the Hon'ble Apex Court in *Rikhi Ram and another v. Smt. Sukhrania and others* [2004 (2) TN MAC 376 (SC)] to contend that the liability of insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act. On this basis, he contended that

the the Insurance Company has no locus-standi to say that they are not liable to pay the compensation on the ground that the transfer of the vehicle in question was not effected to as required under the provisions of the Act. With these submissions, he prayed for dismissal of the appeal preferred by the Insurance Company.

9. Heard the learned counsel appearing on either side and perused the materials available on record.

10. Before going into the issue of quantum of compensation, it is better to deal with the issue of liability aspect first. It is the contention of the appellant Insurance Company that the vehicle was not driven by the second respondent/owner of the vehicle, in whose name the insurance policy was obtained and that the vehicle sold to one Mr.Venkatachalam was not intimated to the Insurance Company as required under the provisions of the Act and that the said vehicle was driven by one Mr.Viswanathan having learner's license. However, it is submitted by the learned counsel for the second respondent/owner of the vehicle that prior

to the accident, the vehicle in question was sold to one Mr.Venkatachalam, residing at No.2, Ambal Theatre back side, Singanallur, Coimbatore, for a sum of Rs.1,50,000/- on 08.02.2011 and on the same date, the vehicle along with necessary forms for transfer were handed over to the transferee. To substantiate the same, the second respondent herein had also produced a copy of the delivery note signed by the transferee, a letter written to the Regional Transport Officer, Coimbatore, receipt of acknowledgment and Insurance policy, which were also marked as Exs.R1 to R5 respectively before the Tribunal. For better appreciation, relevant portion of letter dated 01.10.2012 written by the second respondent herein addressed to the Regional Transport Officer, Coimbatore, is extracted below:

"I sold and handed over the vehicle along with the relevant records, i.e., Original R.C.Book, Original Insurance Certificates, and T.O. Forms etc. on 08.02.2011 to Mr.S.Venkatachalam, S/o.Subbaiyan, No.1, Back side, Ambal Theatre, Singanallur, Coimbatore, and obtained stamped delivery note signed by him. This is for your information and necessary action. I enclose herewith the copy of delivery note."

Thus, from the above, it is clear that the second respondent had sold the vehicle in question to one Mr.Venkatachalam. Apart from this, one Mr.Sundharam-R.W.2, employee of the Insurance Company, deposed before the Tribunal that the insurance policy obtained for the said vehicle in question is valid from 26.01.2012 to 25.01.2013 and therefore, on the date of accident i.e. 02.08.2012, the policy is in force. Thus, now it has to be seen whether the liability of the insurer to pay compensation to the third party ceases? Answering a similar issue in the negative, the Hon'ble Apex Court in *Rikhi Ram's case (cited supra)* has held that whenever a vehicle which is covered by the Insurance policy is transferred to a transferee, the liability of insurer does not cease so far as the third party/victim is concerned. Relevant portion of the said judgment is extracted below:

“The question which arises in the appeal is whether in the absence of an intimation of transfer as required under Section 103-A of the Act, the liability of the insurer to pay compensation to the third party ceases. Earlier, there was a conflicting view of the High Courts as regards the question whether the insurance policy lapses and consequently the liability of insurer ceases when the insured vehicle was transferred and no intimation as prescribed under Section 103-A of the Act was given to the insurer.

This Court in *G. Govindan v. New India Assurance Co. Ltd. and Ors.*, [1999] 3 SCC 754 has settled the controversy as regards liability of insurer to pay compensation to third party in the absence of any intimation of transfer of the vehicle to the transferee. It was held therein that since insurance against third party is compulsory, and once the insurance company had undertaken liability to third party incurred by the persons specified in the policy, the third party's right to recover any amount is not affected by virtue of the provisions of the Act or by any condition in the policy. We are of the view that said decision concludes the controversy in the present appeal. However, we would like to give further reasons that the liability of an insurer does not come to an end even if the owner of the vehicle does not give any intimation of transfer to the insurance company. Chapter VIII of the Act has been enacted following several English statutes. In England, Prior to 1930, there was no law of compulsory insurance in respect of third party rights. Whenever an accident took place the victim or the injured used to take legal proceedings against an erring motorist for recovery of damages. But many a times, it was found that the owner of an offending vehicle was not always in a position to pay compensation or damages to the injured or to the dependants of the deceased

and in that event the claimants could not get the damages. To meet such a situation, various legislations were enacted in England. For the first time, Third Parties (Rights Against Insurers) Act, 1930 was enacted, the provisions of which find place in Section 97 of the Act which gave to third party right to sue directly against the insurer. Subsequently, the Road Traffic Act, 1930 was enacted which provided for compulsory insurance of motor vehicles. The provisions of the said Act was engrafted in Section 95 of the Act. Under Section 38 of English Act, 1930, certain conditions of insurance policy were made ineffective so far as the third parties were concerned. The object behind the aforesaid legislation was that third party right should not suffer on account of failure to comply with those terms of the insurance policy. Section 94 of the Act gives protection to third party in respect of death or bodily injury or damage to the property while using the vehicle in public place and, therefore, the insurance of vehicle had been made compulsory under Section 94 read with Section 95 of the Act.

A perusal of Sections 94 and 95 would further show that the said provisions do not make compulsory insurance to the vehicle or to the owners. Thus, it is manifest that compulsory insurance is for the benefit of third parties. The scheme of the Act shows that an insurance policy can cover three kinds of risk, i.e. owner

of the vehicle; property (vehicle) and third party. The liability of the owner to have compulsory insurance is only in regard to the third party and not to the property. Section 95(5) of the Act runs as follows:

"Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.'

The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

On an analysis of Section 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot

get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act.

For the aforesaid reasons, the appeal is allowed. We set aside the order and judgment under challenge. It is hereby directed that the insurer shall pay compensation to the victims within eight weeks along with the interest @ 11% p.a. from the date of incident and it will be open to the insurer to recover the said amount either from the insured or from the transferee of the vehicle. However, there shall be no order as to the costs."

In the above said case, the appellants therein was the transferee and they have purchased a vehicle from M/s.Bhagwan Rai Amrit Lal who did not give any intimation of the aforesaid transaction to the insurance company and in such a situation, the Hon'ble Apex Court, by holding that whenever

a vehicle which is covered by a valid Insurance policy is transferred to a transferee, the liability of the insurer does not cease so far as the third party / victim is concerned even if the owner or purchaser does not give any intimation as required under the provisions of the Act, directed the Insurance Company to pay the compensation as claimed to the victim, by quashing the orders passed by the High Court as well as the Tribunal in fixing the liability on the transferee. However, in the case on hand, the second respondent, who is the seller of the vehicle, as required under the provisions of the Act, has intimated about the sale of the vehicle in question to the Regional Transport Officer, Coimbatore, as stated above, therefore, the question of fixing the liability on the second respondent/seller does not arise at all as contended by the learned counsel for the appellant Insurance Company, since the existing policy in respect of the vehicle in question will also be deemed to have been transferred to the new owner and the policy will not lapse even if the intimation as required under Section 103 of the MV Act is not given to the Insurer. For, if an owner of a vehicle sells and delivers the same to another, such a transfer of vehicle from the owner to buyer will not affect the liability of

the Insurance Company if there is a valid Insurance coverage on the vehicle. Moreover, any transfer of vehicle will not amount to lapse of the policy.

11. In yet another case, the Hon'ble Apex Court in *S.Iyyapan v. United India Insurance Company and another* [(2013) 7 SCC 62] held thus:

“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.

19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

20. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs."

In the above said case, the question arose for consideration was whether the Insurance Company could disown its liability on the ground that the

driver of the vehicle, though duly licensed to drive a light motor vehicle, was not having any endorsement in the license to driver a light motor vehicle used as commercial vehicle? The Hon'ble Apex Court, by holding that it is a statutory right of a third party to recover the amount of compensation so awarded from the insurer and 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, directed the Insurance Company to pay the compensation so awarded to the dependants of the victim. Therefore, in the case on hand, the contention of the Insurance Company that the driver, who drove the vehicle, was having only the learner's license and that he drove the vehicle without instructor to assist him, cannot be sustained. Thus, in my view, the appellant Insurance Company cannot escape from paying compensation to the injured/first respondent herein, as it is a statutory right of a third party/claimant to recover the amount of compensation so awarded from the insurer.

12. As regards the quantum of compensation is concerned, it is not in dispute that on 02.08.2012 at about 8.30 hrs, while the claimant was going for waking, a vehicle bearing Registration No.TN-37-AP-0525 driven by one Viswanathan, driver of the vehicle, dashed the claimant and as a result, he sustained grievous injuries. Immediately after the accident, he was admitted in Ganga Medical Centre and Hospital, Coimbatore, from 02.08.2012 to 16.08.2012, where he was diagnosed as stated below as could be seen from the discharge summary issued by the said Hospital marked as Ex.A2;

Diagnosis:

--> GRADE III A COMPOUND
FRACTURE BOTH BONES LEFT LEG DISTAL
ONE THIRD

--> GRADE III A COMPOUND
LATERAL MALLEOLUS FRACTURE RIGHT
ANKLE

He was again readmitted in the same hospital on 03.09.2012 and discharged on 17.09.2012 and during the said period, he underwent the following surgeries as could be seen from the discharge summary issued by the said Hospital marked as Ex.A3.

“Operational Notes:

*RIGHT ANKLE DEBRIDEMENT AND ANKLE
SPANNING EXTERNAL FIXATOR
APPLICATION AND K WIRE FIXATION
LATERAL MALLEOLUS.*

Patient in supine position, right lower limb painted and rapped. Under tourniquet control, would over the medical aspect of ankle extended and ankle joint exposed and found the would communicating with right ankle joint and pus collection present in ankle joint, which was debrided thoroughly and granulation tissue removed. Pus sent for culture and sensitivity. Thorough would wash and betadine and H2O2 and saline given. Ankle joint stabilized by external fixator using 2 schanz pin in tibia and 2 shanz pins in foot. Would closed with suction drain. Lateral malleolus fracture reduced and fixed with a K wire.”

Again he was readmitted in the same Hospital between 21.09.2012 and 17.10.2012 to undergo the following surgeries as could be seen from the discharge summary marked as Ex.A4.

“Operational Notes:

OP 1: 06.10.12 : CLOSED INTERLOCKING

NAILING LEFT TIBIA (AO EXPERT TIBIA NAIL)

Under CSEA, patient supine with leg on triangular pillow, with mid line incision, using patellar tendon splitting approach, entry made with bone awl, guide wire passed across fracture site, serial reaming done, fracture reduced and fixed with 330 x 8mm AO expert tibia nail with 3 locking screw distally and 2 locking screw proximally. Wound closed in layers (3/0 ethilon). Sterile dressing done.

*OP II: 12.10.12: EX FIX REMOVAL
AND BELOW KNEE CAST RIGHT LEG.*

Under IV Sedation, ex fix removed from right leg and below knee cast applied. Active tow movements present."

Finally, the Doctor-P.W.3, who examined the claimant, issued a disability certificate certifying 75% of disability, which was also marked as Ex.A6 before the Tribunal.

13. Apart from the above, it is also seen that the claimant, who is aged about 59 years at the time of accident, was working as Iron Master in Shanmugha Textiles, Tirupur, and claimed to have earned a sum of

Rs.12,000/- per month. To substantiate the monthly salary, the claimant/first respondent herein did not produce any document before the Tribunal, therefore, the Tribunal, by considering the fact that the claimant would have earned Rs.200/- per day, fixed a sum of Rs.6000/- as his monthly income. Accordingly, by taking note of the disability certificate issued by the doctor and also taking note of the discharge summary issued by the said Hospital, the Tribunal has awarded a sum of Rs.4,03,200/- ($6000 \times 12 \times 8 \times 70\%$) towards disability, which is, in my view, just and reasonable compensation, therefore, the same is hereby confirmed.

14. Apart from the above, The Tribunal, on scrutinizing the entire medical bills produced by the claimant, has also awarded a sum of Rs.3,45,535/- towards medical expenses. Besides, the Tribunal has also awarded a sum of Rs.25,000/- towards pain and suffering, Rs.20,000/- towards loss of amenities, Rs.2000/- towards nutrition and Rs.2000/- towards transport expenses, which, in my view, are just and reasonable compensation, therefore, the same are hereby confirmed.

15. In the light of the aforesaid observations and also the ratio of the Hon'ble Apex Court as stated supra, the Civil Miscellaneous Appeals fails and the same is dismissed. It is seen from the order passed by this Court on 08.01.2014 that the Insurance Company has already deposited the entire award amount as awarded by the Tribunal. Therefore, the claimant is permitted to withdraw the same along with the accrued interest therein lying in the credit of the Tribunal by moving appropriate application. No Costs. Consequently, connected miscellaneous petitions are closed.

26.10.2016

Index:Yes
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To

The Motor Accidents Claims Tribunal,
I Additional District and Sessions Judge,
Tiruppur.

T.RAJA,J.

rkm

C.M.A. No.54 of 2014

26.10.2016