IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.08.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A.No.1432 of 2009

M/s.New India Assurance Co. Ltd.,
11-19, 78, Govt. Arts College Road
Coimbatore ... Appellant/3rd Respondent

Vs.

1.Saraswathi

2.Senthilkumar

3.Chinnathambi @ Marimuthu

4.K.Gopi

5.M/s.S.N.R.Sons College
Coimbatore ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 27th November 2006, made in M.C.O.P.No.104 of 2004 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Pollachi.

For Appellant : Mr.K.Padmanabhan

For Respondents : Mr.C.Veeraraghavan for R1 to R3

JUDGMENT

Questioning the liability, the appellant Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988.

2.It is manifested from the records that the respondents 1 to 3 herein, who are the claimants, had moved the Motor Accidents Claims Tribunal with a claim petition in M.C.O.P.No.104 of 2004 claiming a sum of Rs.10 lakhs towards compensation for the death of one Thangavel, who is none other than the brother of the claimants in a Road Traffic Accident said to have been taken place on 16.06.2004 at about 11.00am, at Udumalai to Pollachi Main Road, Gomangalam involving an Ambassador Car bearing Registration No.TN38-T-7611 belonging to the 5th respondent herein.

3. While the respondents 4 and 5 herein remained ex parte, the appellant Insurance Company, being the third respondent alone had contested the claim on the crucial question that the claim was not at all maintainable before the Claims Tribunal and that the claim shall have to be made under the "Dealers Trade Certificate". It was also contended that the motorcycle in which the deceased was proceeding at the relevant period was not at all registered as well as insured as per the provisions of Section 39 of the Motor Vehicles Act and hence the Insurance Company ought not to have been held responsible to pay the amount to the claimants.

4. The Accident Claims Tribunal, on heavily banking on the evidences available on record, both oral and documentary, had proceeded to pass an ward of Rs.1,90,000/- as against the claim of Rs.10,00,000/- directing the respondents 4 and 5 and the appellant Insurance Company to pay the amount to the claimants jointly and severally with interest at the rate of 7.5%.

5. The learned counsel appearing for the appellant Mr.K.Padmanabhan has mainly projected his arguments on the following two grounds:-

1) As contemplated under Section 39 of the Motor Vehicles Act, the vehicle should not have been delivered to the deceased without registration as well as without Insurance Coverage; and
2) The motorcycle which was driven by the deceased at the time of accident was not at all insured and registered and hence, the Insurance Company should not have been held responsible.

6. As it is seen from the claim petition, Thangavel was working as a Plumber-cum-Mechanic at Pollachi South Panchayat Union Office. On 16.06.2004 at about 11.00am, while the deceased was travelling along with the other labour by name Ponnan in a Hero Majestic two wheeler from Gomangalam to Pollachi Union Office, an Ambassidor car bearing Registration No.TN38-T-7611 driven by its driver, who is the fourth respondent herein in a hectic speed coupled with negligence, had dashed against the motorcycle and as a result of which, both of them were thrown away. Subsequently, the deceased Thangavel had succumbed to injuries while he was on the way to Hospital and Ponnan had sustained grievous injuries.

7. Insofar as this appeal is concerned, Mr.K.Padmanabhan has specifically argued that since there was no Registration Certificate as on the date of the accident in favour of the vehicle possessed by the deceased, the Dealer of the Motorcycle ought not have delivered the same to the deceased. Further, Mr.K.Padmanabhan has reiterated that in accordance with Section 39 of the Motor Vehicles Act, 1988, no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven by any reason in any public place or in any other place unless the vehicle is registered in accordance with Chapter 4 of the said Act.

8. The appellant Insurance Company has raised this contention before the Claims Tribunal and the Claims Tribunal had also considered this point. In this connection, while passing the award, at Paragraph No.6, the Tribunal has specifically observed that insofar as the appellant Insurance Company is concerned, the deceased is a third party and irrespective of the fact that the motorcycle in which the deceased was travelling was not registered and there was no insurance coverage and since the deceased was having due Driving Licence, the appellant Insurance Company shall have to be held responsible to pay the compensation. The Tribunal has also observed that the question that the vehicle was not registered and the vehicle was not covered by any insurance policy could not be raised at this point of time. However, the Tribunal has specifically observed that insofar as the appellant Insurance Company is concerned, the deceased is a third party and therefore the claimants who are the dependants of the deceased are entitled to get compensation.

9. In support of his contention, Mr.K.Padmanabhan, had placed reliance upon the following decisions:

1) Narinder Singh Vs. New India Assurance Co. Ltd., and Others reported in 2014 (2) TNMAC 485 (SC);
2) Menoka Mondal & Others V. Oriental Insurance Co. Ltd., and another reported in 2015 (2) TNMAC 672 (DB) (Cal.);
3) Chandaram Vs. Swapnil and Others reported in 2015 (2) TNMAC 370 (MP); and
4) Managing Director, Karnataka Road Transport Corporation Vs. New India Assurance Company Limited and anothers & Managing Director, Karnataka Road Transport Corporation and another Vs. Thippamma and others reported in (2016) 2 Supreme Court Cases 382.

10. In Narinder Singh's case cited first supra, a Division Bench of the Apex Court has held that the temporary registration of vehicle for one month expired on 11.01.2006 and the accident took place on 02.02.2006, when the vehicle was not under registration and hence the claim made by the insured was

rejected for non-registration of vehicle. It is also revealed that in the said case, a complaint was filed before the District Consumer Forum which was allowed directing the Insurer to indemnify 75% of the claim. The appeal filed by the Insurer before State Consumer Forum against the said order was allowed and the appeal filed by the insured before the National Commission was dismissed holding that the vehicle driven without registration was prohibited under Sections 39 and punishable under Section 192 of the Act. Further it was held that the insured is not entitled to claim damages caused to his own vehicle since the vehicle was not registered at the time of accident and one month temporary registration was also expired on 11.01.2016. On coming to the instant case on hand, the claim is not made by the deceased being the owner of the vehicle. The registration of the motorcycle is not questioned and hence, this case is not made applicable to the instant case on hand.

11. In Menoka Mondal's case, cited second supra, the claim made by the claimants was dismissed for violation of provisions of MV Act by the deceased motorcycle rider. The deceased carried two pillion riders without wearing protective headgears. It was found that there was violation of the provisions of Sections 128 and 129 of MV Act, 1988 for having carried more than one pillion rider, which was absolutely prohibited under the above said provisions. The dismissal of the claim petition by the Tribunal was upheld by the Apex Court. But the dictum laid down in the said case cannot be directly applied to the present case. This Court has carefully gone through the decision of the Division Bench of the Calcutta High Court. However, the facts and circumstances narrated therein are completely in conflict with the facts and circumstances of the present case on hand. Hence, this decision is not made applicable to the case hand.

12. Similarly, the decision in Chandaram's case cited third supra, is also not applicable to the case hand because the vehicle involved in that case was insured by making payment of life time premium. The life time premium policy was valid as long as the registration certificate of vehicle was in force. In that case, the insurance policy seemed to have been issued as per Section 41(7) of the Motor Vehicles Act. Therefore, the policy comes to an end unless Registration Certificate was renewed. Since the accident was taken place after the expiry of the Registration Certificate, the Insurance Company was rightly absolved and exonerated from its liability. Mr.K.Padmanabhan, learned counsel for the appellant has drawn the attention of this Court to paragraph 8 of the said decision wherein a learned single Judge of the Madhya Pradesh High Court has held that the registration itself had come to an end and in the absence of its renewal, the Insurance Policy could not stand on its own legs.

On mere reading of this decision, it can be easily understood that the ratio decidendi laid down in the said case also cannot be applied to the present case on hand.

13. In another case sited fourth supra, it is held that under lease agreement it was the liability of the owner to provide comprehensive insurance cover for all kinds of accident risks and he was under liability to: a) provide bus regularly;b) employ a driver, who was to be duly licensed and not disqualified as provided in agreement, and c) make payment of salary to driver. It was further held that the bus was to be plied on routes as specified by SRTC and hiring charges were to be paid to registered owner and as per the agreement, owner of the bus was to be solely liable for any claim arising out of any accident met by the bus, however, if SRTC had to pay compensation arising out of any such accident, SRTC could recover that amount from the owner out of the amount payable by it to owner or from the amount payable by insurer to owner. But, insofar as the present case is concerned, it is not made clear as to how far this decision could be equated with the given case on hand. Hence, this decision is also considered to be not applicable to the present case.

14. As rightly observed by the Tribunal that the deceased is a third party irrespective of the fact that the motorcycle is not insured or registered at the material time. This Court has considered the submission made on behalf of both sides and perused the award passed by the Tribunal. This Court finds that the Tribunal had granted compensation only to the extent of Rs.1,90,000/- under the following heads:

Loss of Income	:	Rs.1,80,000/-
Funeral Expenses	:	Rs. 5,000/-
Loss of Love and Affection	:	Rs. 5,000/-.

The above compensation granted by the Tribunal seems to be very low and hence it does not require the interference of this Court.

In view of the forgoing discussions, this Court comes to the conclusion that the appeal is liable to be dismissed. Accordingly, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gpa

To

The Subordinate Judge,
Motor Accident Claims Tribunal
Pollachi.

+1cc to Mr.C.Veeraraghavan, Advocate, S.R.No.46193

C.M.A.No.1432 of 2009

CTR(CO)
CA(21/12/2016)