IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2012

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.No.2446 of 2012
M.P.No.1 of 2012

The Divisional Manager,
United India Insurance Co. Ltd.,
Pondicherry. ... Appellant/2nd Respondent

vs.

1.Mohammed Hayath ..Respondent/Petitioner

2.A.Narasimman .. Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the award and decree, dated 17.03.2011 made in M.C.O.P.No.1094 of 2006 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Puducherry.

For Appellant : Mr.S.Arun Kumar

J U D G M E N T

Being aggrieved by the finding of the Tribunal, regarding negligence, liability and the quantum of compensation, United India Insurance Company has preferred this appeal.

2. In an accident, which occurred on 25.03.2006, the respondent/claimant sustained grievous injuries. He claimed compensation of Rs.10,00,000/-. The appellant-Insurance Company resisted the claim application, contending inter alia that on the date of accident, the rider of the offending vehicle did not possess a valid and effective driving licence and therefore, they are not liable to pay compensation. Without prejudice to the above, they have also disputed the injuries sustained, period of treatment, medical expenses and disability suffered on account of the injuries.

3. Before the Tribunal, the respondent/claimant examined himself as PW.1 and PW.2, is the Doctor, who examined the respondent/claimant, with reference to medical records. Exs.P1 to P11 have been marked on the side of the respondents/claimants. On behalf of the appellant-Insurance Company, rider of the offending vehicle and official of the Company have been examined as Rws.1 and 2 respectively and marked two documents as Exs.B1

and B2, Authorisation Letter and Photocopy of Final Report respectively.

4. The Tribunal, on evaluation of pleadings and evidence, found that the rider of the offending vehicle, insured with the appellant-Insurance Company, was negligent, in causing the accident and quantified the compensation at Rs.1,76,000/- with interest at the rate of 7.5% per annum. As regards liability to pay compensation, though the Tribunal has found that the rider of the offending vehicle did not possess any valid driving licence at the time of accident, following the decisions in New India Assurance Co. Ltd., v. Kavitha reported in 2010 (6) CTC 739 and New India Assurance Company Ltd., v. Muniyapandi reported in 2010 (8) MLJ 722, directed the appellant-Insurance Company to pay the compensation to the respondent/claimant and recover the same from the insured.

5. Learned counsel for the appellant-Insurance Company submitted that the rider of the offending vehicle, insured with them, did not possess a valid and effective driving licence to drive the vehicle, at the time of accident and hence, the Company cannot be fastened with the liability to pay compensation. He further submitted that the quantum of compensation awarded to the respondent/claimant is on the higher side.

Heard the learned counsel for the parties and perused the materials available on record.

6. PW.1, respondent/claimant, in his evidence, has deposed that on 25.03.2006 about 20.00hrs, when he was standing on the extreme left side of ECR Road at Anichakuppam, near Srilanka Refugee Camp, Kizhputhupattu, Tindivanam Taluk, a motor cycle, bearing Registration No.PY-01-AB-2400, owned by the second respondent and insured with the appellant-Insurance Company, driven by its rider, in a rash and negligent manner, dashed against him and consequently, he fell down and sustained grievous injuries. His oral testimony is well supported by Ex.P1 - FIR, complaint given by himself, registered inCr.No.138/2006, under Section 279, 338 IPC against the rider of the offending vehicle. The registration number of the vehicle has been clearly mentioned in the FIR. There is no rebuttal evidence to contradict the version of the respondent/claimant.

7. It is the well settled law that proceeding before the Claims Tribunal is summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. In the absence of any rebuttal evidence, the finding of the Tribunal regarding negligence cannot be terms as perverse or it is not a case of no evidence.

8. There is no dispute that the offending vehicle belonged to the second Respondent. It is evident from Ex.P4 - Insurance

Policy that the offending vehicle was insured with the appellant-Insurance Company. It is the contention of the appellant-Insurance Company that the rider of the offending motor cycle, namely, Ayyanar had no valid driving licence to drive the said vehicle and that the second respondent had permitted the said rider to drive the vehicle, knowing fully well that he did not possess any valid driving licence at the time of accident, which is a violation of policy condition and the said fact has been well established by the appellant-Insurance Company, by examining the rider of the offending vehicle, who himself had admitted that he was not having proper driving licence at the time of accident and hence, they are not liable to pay any compensation to the respondent/claimant.

9. Though the learned counsel for the appellant sought for total exoneration from payment of compensation to the third party accident victim, following the decisions of the Apex Court in Skandia Insurance Co. Ltd., v. Kokilaben reported in (1987) 2 SCC 654, Sohan Lal Passi Vs. P.Sesh Reddy, reported in (1996) ACC 617 (SC) = 1996 ACJ 1044 (SC) = 1996(5) SCC 21, New India Assurance Company Ltd., Shimla, Vs. Kamla and others, reported in 2001 (4) SCC 342, United India Insurance Company Ltd., Vs. Lehru and others, reported in 2003 (3) SCC 338, National Insurance Co. Ltd., v. Swaran Singh reported in 2004 ACJ 1, Oriental Insurance Co. Ltd., v. Meena Variyal reported in 2007 ACJ 1284, National Insurance Company Ltd., Vs Laxmi Narain Dhut, reported in 2007 (2) L.W 719 and three Division Bench judgments of this Court in United India Insurance Company Ltd., v. S.Saravanan reported in 2009 (2) TNMAC 103 (DB), United India Insurance Company Limited, Salem, Vs. V.Vijayakumar, represented by his mother Kalamani and three others, reported in 2010 (2) TN MAC 388 (DB) and Bajaj Alliance General Insurance Company Ltd., Pune, Vs. Manimozhi and four others, reported in 2010 (2) TN MAC 542 (DB), in a batch of appeals in C.M.A.Nos.2126 of 2009, 3175, 3534, 3806 of 2011 and 100 and 179 of 2012, dated 06.02.2012, this Court, after hearing learned counsel appearing for the Insurance Companies, at length and following the dictum of the Supreme Court that payment of compensation to a third party victim or legal representatives of the deceased, as the case may be, being statutory and considering the interpretation given by the Supreme Court to Sections 147, 149 (4) and (5) vis-a-vis the defences open to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act and by holding that the very introduction of the words, "pay compensation to the third party and recover the same from the insured" in Section 149(4) and (5) of the Act, would reflect the divine intention of the legislature to protect the interest of the third parties, vis-a-vis inter-se disputes between the insured and insurer, held that the insurer cannot avoid its liability to pay compensation to a third party to pay compensation, but such avoidance can be made only, if willful breach of terms and conditions of the policy by the insured, by consciously and recklessly allowing the driver, who did not possess a valid and effective driving licence, to drive the vehicle and even if such breach is proved, payment of

compensation to the third party victim cannot, at any stretch of imagination, be avoided by the Company and that the only remedy open to the insurer in law is to pay the compensation to the third party victims and recover from the insured. In view of the above, the insurer cannot be totally exonerated from payment of compensation to third party, but it can avoid its liability only to the insured.

10. P.W.1, respondent/claimant, in his evidence, has deposed that due to the accident, he has sustained fracture and multiple injuries all over the body. Immediately, he was taken to PIMS Hospital, Pondicherry and he has taken treatment as inpatient. Upon perusal of Ex.P3 - Wound Certificate, it is evident that the respondent/claimant sustained Type lll-B Compound fracture both in left Tibia and fracture in left Fibulla. The doctor, who issued a wound certificate, has opined that the injuries sustained by the respondent/claimant were grievous in nature. Exs.P6 and P7 are the Discharge summaries issued by PIMS Hospital, Pondicherry. The also reveals that the respondent/claimant was taking treatment for the period from 26.03.2006 to 18.04.2006 and 24.05.2006 to 05.06.2006 and also underwent surgeries on 26.03.2006, 06.04.2006 and 25.05.2006.

11. PW.2, Doctor, who examined the respondent/claimant, with reference to medical records, assessed the disability at 48% and issued Ex.P10 - Disability Certificate. Apportionment of percentage of disability has been made as follows:

1. Malunion of both left tibia and fibula - 8%
2. Tenderness over fracture site - 6%
3. Wasting of left leg calr muscle with muscle - 6%
4. Shortening of left leg of 1½ inch camp with med Mallecules of right -8%
5. Restriction of left ankle of terminal 20 Degrees of lorsiflexion - 20%

Based on the same, the Tribunal has awarded Rs.96,000/- towards disability compensation at the rate of Rs.2,000/- per percentage. That apart, the Tribunal has also awarded Rs.25,000/- towards mental agony and pain and suffering, Rs.35,000/- towards medical expenses, Rs.10,000/- towards loss of income for the period of two months, Rs.2,000/- towards damage to cloths, Rs.4,000/- towards extra nourishment and Rs.4,000/- towards transportation. Altogether, the Tribunal has awarded Rs.1,76,000/- with interest at the rate of 7.5% per annum.

12. The respondent/claimant has sustained Type lll-B Compound fracture in left Tibia and fracture in left Fibulla, for which, he had underwent three surgeries on 26.03.2006, 06.04.2006 and 25.05.2006 respectively. The injuries would have certainly caused pain at the time of accident and the surgeries would have the same effect and considering the overall evidence and nature of injuries, the quantum of compensation awarded by the Tribunal cannot be said to be on the higher side.

13. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount, less the statutory deposit, with interest at the rate of 7.5% per annum from the date of claim and costs, to the credit of M.C.O.P.No.1094 of 2006 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Puducherry, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent/claimant is permitted to withdraw the same, by making necessary application before the Tribunal. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/
Deputy Registrar

/true copy/

Sub Asst.Registrar

skm

To
The Motor Accidents Claims Tribunal
(II Additional District Judge),
Pondicherry, U.T of Puducherry.

1 cc To M/s.S.Arunkumar, Advocate, SR.15876

C.M.A.No.2446 of 2011

KJ(CO)
SRA(05/09/2012)