IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.04.2017

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

CMA No.2678 of 2015
M.P.No.1 of 2015

The Divisional Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Coimbatore. ... Appellant/3rd Respondent

Vs.

1. S.Balasubramani
2. S.Danzi
3. C.Pandian ... Respondents 1 to 3/Petitioner, Respondents 1 to 2

Prayer: Appeal under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (Additional District Judge) at Namakkal, made in M.C.O.P.No.190 of 2009, dated 23.04.2015.

For Appellant : Mr.M.Krishnamoorthy

For 3rd Respondent : Mr.R.Karunagaran
for Mr.B.Nagarajan

J U D G M E N T

(Judgement of this Court was made by S.MANIKUMAR, J.)

Questioning the finding of the Tribunal, fixing liability on the Appellant-Insurance Company to pay compensation, to the legal representatives of the deceased, on the ground that at the time of accident, the driver of the Mini Door Auto, bearing registration No.TN 46 C 8946, did not possess a valid and effective driving licence, to drive the vehicle and therefore, no liability can be fastened on the Insurance Company, present appeal has been filed. The Company has further contended that the respondent/claimant was travelling only as an unauthorised passenger in the goods vehicle. The Company has also contended that the owner of the offending vehicle has violated the policy condition, by allowing five gratuitous passengers, to travel in the said vehicle, which has seating capacity, only for the driver.

2. Material on record discloses that accident has occurred on 14.01.2009, about 1.30 P.M., when the offending vehicle, bearing Registration No.TN 46 C 8946, capasized on Vellore to Namakkal National Highways, near Kongu Matriculation School, in which, the injured is stated to have travelled as a cleaner, in the cabin. He sustained fracture in left hand, and galezzi fracture left radius left forearm. Left fingers 4 and 5 have been completed amputated and that there was partial amputation of 2nd and 3rd left fingers at Middle Phalanx with non-viable finger tips and dorsal amputation of left thumb top, at the level of the next DPS. He claimed compensation of Rs.10,00,000/-, under various heads.

3. The appellant-Insurance Company, insurer of the Minidoor Auto, bearing registration No.TN 46 C 8946, denied the manner of accident. The company further contended that the respondent/claimant travelled in the cabin, permissible only for the driver and without prejudice to the same, contended that he had not taken care, while sitting. Due to the road condition, the vehicle was probably shaking, due to which, he lost control and fell down from the vehicle and thus, got injured.

4. The appellant-Insurance Company, insurer of the Minidoor Auto, bearing registration No.TN 46 C 8946, resisted the claim, by contending that the driver of the Minidoor Auto did not possess a valid driving licence, at the time of accident and that therefore, for breach of policy conditions, by the owner of the Auto, the Insurance Company is not liable to pay compensation. Without prejudice to the above, the Company disputed the age, avocation and income of the deceased and the compensation claimed under various heads.

5. Before the Claims Tribunal, injured examined himself as PW.1 and PW.2 is the Doctor, who examined the injured, on the basis of the medical records. Ex.P1- FIR, Ex.P2 - Wound Certificate, Ex.P3 - Motor Vehicles Inspector's Report, Ex.P4 - Charge Sheet, Ex.P5 - Certified copy of the Judgement, Ex.P6 - Discharge Summary, Ex.P7 - Medical Bills, Ex.P8 - X-Rays (8 in series), Ex.P9 - Insurance Policy, Ex.P10 - Photographs, Ex.P11 - Doctor's Prescriptions, Ex.P12 - ECG, Ex.P13 - X-Ray and Ex.P14 - Disability Certificate, have been marked on the side of the respondent/claimant. No oral or documentary evidence has been adduced, on behalf of the appellant-Insurance Company.

6. On evaluation of pleadings and evidence, the Claims Tribunal held that the driver of the Minidoor Auto, bearing

registration No.TN 46 C 8946 and insured with the appellant insurance company, was negligent in causing the accident and having regard to the age, avocation and income of the injured, quantified the compensation at Rs.11,35,900/-, with interest, at the rate of 7.5% per annum, from the date of claim, till realisation.

7. Perusal of the memorandum of grounds does not disclose any challenge, regarding findings on negligence and the quantum of compensation and therefore, there is no need to advert to the same.

8. The first contention raised before this Court is that the driver of the Minidoor Auto did not possess a valid and effective licence on the date of accident and that the Claims Tribunal ought to have held that there was a breach of policy condition, for which, the insured/owner of the vehicle alone, ought to have been held responsible for allowing such an unlicensed person to drive the vehicle and that therefore, the Tribunal has erred in fixing liability on the company to pay compensation.

9. On the above plea, we are of the view that merely because, in Ex.P3 - Motor Vehicles Inspector's Report, there was a reference that the driver of the Minidoor Auto did not have the required badge, that alone cannot be taken as evidence to absolve the Insurance Company, from compensating the injured. Further, appellant-Insurance Company has not taken any steps, to ascertain the particulars of driving licence of the Minidoor Auto, from the concerned regional Transport Office or summon the concerned Regional Transport Officer to substantiate the same. No steps have been taken by the appellant-Insurance Company to examine the driver of the offending vehicle, even though he is a party to the proceedings.

10. The issue as to whether, a third party victim is entitled to seek for compensation from the insurer, is no longer res integra in view of the Division Bench decisions 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).

11. The question as to whether, it is open to the insurer to seek for total exoneration for payment of compensation to a third party victim or whether it has only a right of recovery under Sections 149 (4) and (5) of the Motor Vehicle's Act, has

been extensively considered in ICICI Lombard General Insurance Company Vs. Annakkili, reported in 2012 (1) TN MAC 226, wherein, this Court following the principles of law laid down by the Apex Court and the Hon'ble Division Bench judgments held that, payment of compensation to a third party victim or legal representatives of the deceased, as the case may be, is 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 held 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, and further held that the insurer cannot avoid its liability to pay compensation to a third party, 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.

12. The second contention of the appellant-Insurance Company that the owner of the Minidoor Auto, has violated the policy condition, by allowing the injured to travel in the cabin of the offending vehicle, also does not merit any consideration, for either exoneration or for granting liberty to the insurer to pay and then, to recover from the insured, for the reason that PW.1, injured, in his evidence, has stated that he had travelled in the vehicle, only as a cleaner and not a gratuitous passenger. As per Section 147(c) of the Motor Vehicles Act, 1988, no separate insurance cover is required for the employee/owner of the goods or representative of the owner. As per the testimony of PW.1, at the time of accident, five persons travelled in the vehicle. Along with the driver, one person was seated in the cabin, which was wide enough to accommodate both, and other three persons travelled in the vehicle, along with the goods. Offending vehicle, viz., Bajaj Minidoor Auto, has been described as a light motor vehicle. It cannot be said that because of carrying more persons in the cabin, the accident occurred.

13. On the facts and circumstances of this case, this Court is of the view that the appellant-Insurance Company has failed to prove breach or violation of policy conditions, and that therefore, findings of the Claims Tribunal, fixing liability on the appellant-Insurance Company to pay compensation, cannot be said to be erroneous.

14. In the result, the Civil Miscellaneous Appeal is dismissed. It is represented that the appellant-Insurance company has already deposited the entire award amount with proportionate accrued interests and costs. In view of the same, the respondent/claimant is permitted to withdraw the award amount, lying in the deposit, after making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

skm

To

1.The Motor Accident Claims Tribunal,
(Additional District Judge) at Namakkal.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.22957

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srg 16/06/2017