

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2017

CORAM:

THE HONOURABLE MRS. JUSTICE. PUSHPA SATHYANARAYANA

CMA.No.269 of 2015

P.Ranganathan

...Petitioner/Appellant

Vs.

1. Jani Babu

2. The Manager,
The National Insurance Company Limited,
Officers Line, Vellore.Respondents/Respondents

Prayer : Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 19.08.2011, made in M.C.O.P.No.223 of 2011, on the file of the Motor Accident Claims Tribunal, (Additional District and Sessions Judge, Fast Track Court), Vellore.

For Appellant : Mr.C.Prabakaran

For Respondents : Mr.S.Arunkumar (R2)

J U D G M E N T

Challenging the liability as well as quantum of compensation awarded by the Claims Tribunal, in M.C.O.P.No.223 of 2011, dated 20.03.2017, the Claimant has come forward with this Civil Miscellaneous Appeal.

2. The Claimant Ranganathan, aged 57 years, working as a Sub Inspector of Police earning a sum of Rs.12,000/- per month met with an accident on 11.11.2006. Due to which the claimant sustained grievous injuries. Hence, the claimant filed M.C.O.P.No.223 of 2011, claiming a sum of Rs.6,00,000/- as compensation.

3. The Tribunal, on consideration of oral and documentary evidence, fixing negligence on the part of the first respondent, has awarded a sum of Rs.1,30,000/-, with interest @ 7.5% per annum from the date of petition till the date of deposit and the first respondent, owner of the vehicle was directed to pay the compensation to the claimant.

4. The learned counsel for the appellant would contend that the tribunal has awarded a sum of Rs.67,500/- towards disability which is very low. He would further submit that the amount of compensation awarded by the tribunal is very low and meager and the same needs to be enhanced. It is also his submission that in a case of non-possession of driving licence, the tribunal ought to have been awarded pay and recover based on the settled principles of law by the Hon'ble Apex Court. It is also submitted that the driver is riding the vehicle on behalf of the owner of the vehicle but mere non possession of driving licence does not take away the contractual liability of the Insurance Company. Therefore, the Insurance Company may be directed to pay the compensation amount and directed to recover the same from the owner of the vehicle.

5. The learned counsel for the second respondent would submit that the Claims Tribunal, on consideration of oral and documentary evidence has rightly fixed the liability on the first respondent and also awarded a just and reasonable compensation and the same need not be interfered with.

6. Heard both sides and perused the materials available on record.

7. A perusal of the award passed by the Claims Tribunal would go to show that considering the evidence of P.W.- Doctor and also Ex.P7- disability certificate issued by P.W.2 has rightly awarded a sum of Rs.67,500/- towards disability which is reasonable. The Tribunal taking into consideration of Ex.P4- Medical Bills has awarded a sum of Rs.17,000/- which is also reasonable. Taking into consideration of the nature of injuries and the period of treatment, a sum of Rs.3,000/- was awarded towards nutritious food, a sum of Rs.3,000/- towards attendant charges, a sum of Rs.3,000/- towards loss of amenities, Rs.3,000/- towards loss of estate, Rs.3,000/- towards mental agony and a sum of Rs.5,000/- towards future expenses, which are reasonable and the same does not warrant any interference.

8. The Hon'ble Supreme Court, in a case of National Insurance Company Ltd., Vs. Swarn Singh, reported in 2004 (1) TNMAC 104 (SC) has taken note of various decisions including that of the decision in Sohan Lal Passi V. P.Sesh Reddy reported in 1996 (5) SCC 21, and their Lordships held as follows:

"102. The summary of our findings to the various issues raised in these petitions are as follows:

(iv) The Insurance companies are, however, with a view to avoid their liability must not only establish the

available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle, the burden of proof wherefor would be on them.

(v) The Court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow defences available to the insurer under Section 149 (2) of the Act.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149 (2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of the claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of

land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal."

9. In the instant case, the rider of the vehicle has no valid driving license. Mere absence or invalid licence or disqualification of driver are not in themselves defences available to the insurer either the insured or their parties. The burden is on the insurer to prove that the insured was guilty of negligence and failed to exercise reasonable care in fulfilling the policy conditions regarding use of vehicle by licensed driver. The insurance company has not established the breach on the part of the insured.

10. The Motor Accident Claims Tribunal failed to apply the principles laid down by the Hon'ble Supreme Court in the decision referred supra. In Paragraph 99 of the decision of the Hon'ble Supreme Court in National Insurance Co.Ltd. Vs. Swaran Singh & others reported in 2004 (1) TNMAC 104 SC, it is held as follows:

"99. We may, however, hasten to add that the Tribunal and the Court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, regard to provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Claims Tribunal it had not been able to do so, the insurance company may initiate a separate action therefore against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or

comes to the notice of the insurer at a subsequent stage or for reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to knowledge of the insurer at a later stage."

11. Considering the same, the Insurance Company is directed to deposit the award amount and recover the same from the owner of the vehicle.

12. In the result, this appeal is partly allowed confirming the Judgment and decree of the Claims Tribunal, in M.C.O.P.No.223 of 2010, on the file of Motor Accident Claims Tribunal (Additional District and Sessions Judge, Fast Tract Court), Vellore. The Insurance Company is directed to deposit the entire award amount, within a period of four weeks from the date of receipt of a copy of this order and recover the same from the owner of the vehicle i.e. the first respondent herein. On such deposit being made, the claimant is permitted to withdraw. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

arr

To

The Motor Accident Claims Tribunal,
(Additional District and Sessions Judge, Fast Track Court),
Vellore

+1cc to M/S.S.Arunkumar, Advocate Sr. 17394

+1cc to M/S.C.Prabakaran, Advocate Sr. 17142

CMA.No.269 of 2015

CNR(CO)
VR(18/5/2017)