IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2017

CORAM

THE HON'BLE Dr.JUSTICE S.VIMALA

C.M.A.No.2129 of 2014

M/s.New India Assurance Company Ltd.,
Gobichettipalayam. ... Appellant/2nd Respondent

Vs.

1. Karuppal @ Karuppathal [Deceased]
2. Sakthivel
3. Karuppan
4. Saradha ... Respondents/Petitioner/1st Respondent

(R3 & R4 brought on record as LRs of the deceased R1 vide order of Court dated 16.07.2014 made in CMP No.260/2014)

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 09.01.2004 made in M.C.O.P.No.295 of 2002 on the file of the Motor Accident Claims Tribunal, [Principal Sub Judge], Gobichettipalayam.

For Appellant : Mrs.Sreevidhya
For Respondents : Mr.Ma.Pa.Thangavel

J U D G M E N T

The award dated 09.01.2004 passed in M.C.O.P.No.295 of 2002 by the Motor Accident Claims Tribunal, [Principal Sub Judge], Gobichettipalayam, is being challenged by the Insurance Company on the ground that at the time of accident, the driver was not in possession of a valid driving licence.

2.Learned counsel for the appellant pointed out that Ex.R-2 dated 11.12.2013 filed before the Claims Tribunal, does not bear any endorsement regarding the eligibility of the driver to drive transport vehicle.

3.Learned counsel for the appellant relies upon the evidence of R.W.1, who, in his deposition has accepted that the licensee should have a valid endorsement in the driving license with regard to the eligibility to drive a tourist van and there being no such endorsement in this case, inference has to be drawn that the driver was not in possession of a valid driving license and, therefore, the insurance company is not liable to pay the compensation as ordered by the Tribunal, in view of the violation of the terms and conditions of the contract.

4.The 1st respondent, since deceased, represented by her legal heirs, viz., respondents 3 and 4, met with an accident that took place on 11.3.2002 at about 7.15 p.m. The Mahindra van, driven by its driver in a rash and negligent manner, hit against the 1st respondent due to which, she sustained multiple grievous injuries. Therefore, she filed a claim petition before the Claims Tribunal claiming a compensation in a sum of Rs.4,00,000/-.

5.The Tribunal, considering the oral and documentary evidence adduced on behalf of the parties, awarded a sum of Rs.1,50,200/- along with interest at 9% from the date of claim petition till date of deposit, the break-up of which are as hereunder :-

Loss of income	-	Rs.1,45,200/-
Pain & Suffering	-	Rs. 3,000/-
Extra Nourishment	-	Rs. 2,000/-
Total	-	Rs.1,50,200/-

Aggrieved against the said award of Rs.1,50,200/-, the insurance company has filed the present appeal on the ground stated above.

6.The appellant has not raised much demur with regard to the quantum of compensation awarded, since the main bone of contention of the appellant is that it is not liable to pay the amount as the driver of the van, which was insured with the appellant, was not possessed of a valid driving licence.

7.On a reading of the entire evidence adduced by the witnesses together with the documentary evidence substantiating the said evidence, it is clear that the 1st respondent suffered multiple injuries for which the Tribunal has quantified the compensation as above. Considering the nature of injuries and the treatment taken for the same, certainly the compensation awarded by the Tribunal cannot be termed to be excessive or disproportionate or unreasonable. Therefore, this Court is of the considered view that no interference is called for with the compensation awarded by the Tribunal.

8.The only ground on which the compensation is sought to be attacked is that the driver of the van was not possessed of a valid driving licence, which is evident from the fact that D.W.1, in his evidence has deposed that the endorsement relating to permission for the licensee to drive tourist vehicle was not found in the licence of the driver of the van.

9.This Court in a case of even date in United India Insurance Co. Ltd. - Vs - Minor A.Jawahar Pragadeeshwar (CMA No.9 of 2014), in an almost identical scenario, wherein the driver of the vehicle was not possessed of a valid driving licence, held as under :-

> "5. The terms and conditions of insurance is a binding contract between the insurer and the insured. The insurance company questions its liability to pay the amount only on the ground of the driver of the motorcycle not having a valid driving licence. There is no second opinion that it is the liability of the insurer to pay the amount to the claimant in case the vehicle in question has a valid insurance cover. In the case on hand, the motorcycle in question is fully insured with the appellant/ insurance company. However, that would not preclude the insurance company to disown its liability to adhere to the terms of the policy on the ground that the driver of the insured vehicle does not possess a valid driving licence. The insurance policy provides for cover for any accident that may happen during the period during which the policy is in force. The insurance policy further provides for covering the liability to compensate the victim in case of any accident caused by the insured vehicle. Therefore, the first leg of the policy mandates that the insured vehicle meeting with any accident, the victim of the accident is to be compensated in terms of the conditions of the policy. However, equally true it is that violation of the policy terms cannot be put against the insurer and it is the insured who is liable in such circumstances. Therefore, for any violation of the insurance terms, it is always open to the insurance company to proceed against the insured, but however, breach of the terms and conditions cannot in any way be binding on the claimant and would in no way, affect the case of the claimant to claim compensation. It is for the insurer to proceed against the insured in a manner known to law to recover the due, which is not due and payable by the insurer on account of the violation of the terms and conditions of the insurance, but which liability stands transferred to the shoulder of the insured for non-adherence to the policy conditions.

> 6. Therefore, there being a valid insurance cover for the vehicle in question, which covers accidental mishap, there is no embargo on the Tribunal to direct the insurance company to pay the amount to the claimant. However, for the violation of the terms and conditions of the insurance, the insurance company was given the liberty to recover the amount from the insured, for violation of the terms of insurance. Therefore, the direction passed by the Tribunal directing the insurance company to pay the compensation to the claimant and granting liberty to the insurance company to recover the same from the insured cannot be found fault with. There being nothing wrong in the order passed by the Tribunal, this appeal deserves to be dismissed."

10.In the case on hand, the evidence of R.W.1 categorically goes to show that endorsement relating to permission to drive tourist van was not available in the licence of the licensee. That being the case, knowing fully well that the driver was not possessed of a valid driving licence as per the terms of insurance, the owner of the vehicle having allowed the driver to drive the van, liability is cast on the owner of the vehicle to compensate the claimant. However, the insurer is liable to indemnify the owner of the vehicle in view of the valid insurance policy in existence, but with liberty to recover the same from the insured, viz., the owner of the vehicle, for breach of the contractual terms. Therefore, there was nothing wrong in the Tribunal directing the appellant to pay claimant the compensation and granting the appellant liberty to proceed against the owner of the vehicle for recovering the amount, in a manner known to law. Therefore, this Court is of the considered view that no interference is called for with the well considered finding of the Tribunal.

11.For the reasons aforesaid, the appeal is dismissed confirming the order passed by the Tribunal. However, in the circumstances of the case, there shall be no order as to costs. The claimant, having since died, the legal heirs of the deceased claimant, viz., respondents 3 and 4, who are the husband and daughter, are entitled to equal share in the compensation awarded by the Tribunal and confirmed above.

12.The appellant/insurance company is directed to deposit the entire award amount, less the amount, if any, already deposited, together with interest at 9% per annum from the date of petition till date of deposit, to the credit of MCOP. No.295/2002 on the file of the Motor Accident Claims Tribunal, [Prl. Sub Judge], Gobichettipalayam, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to apportion the amount in the ratio ordered by this Court above and transfer the apportioned amount directly to the bank account of the respective respondents through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gya/GLN

To
1. The Principal Subordinate Judge,
   The Motor Accident Claims Tribunal
   Gobichettipalayam.

2. The Section Officer
   V.R.Section, High Court,
   Madras. (2 copies)

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.1925
+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.1543

C.M.A.No.2129 of 2014

KK(CO)
sm:5.2.2018