IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2017

CORAM

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

C.M.A.No.683 of 2017
C.M.P.No.3822 of 2017

M/s.Iffco Tokio General Insurance Co. Ltd.,
Chennai 600 012. ... Appellant

vs.

1. Krishnamoorthy
2. Parameswari
V.Ravichandran (Died)
3. Veeralakshmi
4. Minor Keerthana ... Respondents
(Minor is represented by
her mother, 3rd respondent)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree, made in M.C.O.P.No.477 of 2009, dated 11.12.2015, on the file of the Motor Accidents Claims Tribunal (Principal District Court), Namakkal.

For Appellant : Mr.N.Vijayaraghavan

For Respondent : Mr.Ma.P.Thangavel

JUDGMENT

(Judgement of this Court was made by **Justice S.MANIKUMAR)**

Aggrieved by the award, dated 11.12.2015 made in M.C.O.P.No.477 of 2009, on the file of the Motor Accidents Claims Tribunal (Principal District Court), Namakkal, the Insurance Company has preferred the present appeal.

2. Facts leading to the claim petitions are as follows:

That on 07.11.2007, about 16.00 Hours, when Nitya was travelling in a LMV Motor Car, bearing Registration No.TN 05 C 1238, on Salem-Dharmapuri Main Road, near Nallathambi Land, Thalavaipatti, a lorry, bearing Registration No.TN 28 AA 3918, owned by the V.Ravichandran (Died), legal representatives impleaded as respondents 3 and 4 herein, and insured with the appellant-Insurance Company, came in a rash and negligent manner and dashed against the LMV Motor Car, she sustained grievous multiple injuries and died on the way to hospital. In this regard, a case in Cr.No.421 of 2007, has been registered against the driver of the lorry, for the offences under Sections 279, 338 and 304(A) IPC., on the file of the Deevattipatti Police Station. For the death of the deceased, legal representatives of the deceased have claimed compensation of Rs.15,00,000/-.

3. The appellant-Insurance Company, resisted the claim, contending inter alia that the accident occurred due to the rash and negligent driving of the driver of LMV Motor Car, bearing Registration No.TN 05 C 1238. Without prejudice to the above, they submitted that at the time of accident, the driver of the lorry had no valid and effective driving licence, to drive the vehicle, which was loaded with crakers. According to them, it is the duty of the owner to ensure that the driver of the goods carriage, carrying dangerous or hazardous goods, holds a driving licence, as per Rule 9 of the Motor Vehicles Rules, 1988. Company has further submitted that the responsibility of the driver, who drives the vehicle with hazardous goods, is that the driver of a goods carriage, transporting dangerous or hazardous goods, shall ensure that the information given to him in writing under sub-Rule (3) of Rule 132, is kept in the driver's cabin and available at all times, while the dangerous or hazardous goods, to which it relates, are being transported. Hence, they contended that there is violation of policy condition, for which, they are not liable to pay compensation.

4. Before the Tribunal, mother of the deceased has been examined as PW.1 and PW.2, is the eye-witness to the accident. Ex.P1 - FIR, Ex.P2 - Post-mortem Certificate, Ex.P3 - Death Certificate, Ex.P4 - Legalheirship Certificate, Ex.P5 - B.E. Provisional Certificate, Ex.P6 - B.E. Convocation Certificate, Ex.P7 - M.E. Provisional Certificate, Ex.P8 - M.E. Course Completion Certificate, Ex.P9 - Marriage Registration Certificate, Ex.P10 - Birth Certificate, Ex.P11 - Driving Licence, Ex.P12 - Salem Government Engineering College Certificate and Ex.P13 - Driving Licence, has been marked. On behalf of the appellant-Insurance Company, a Public Relation Officer of the Company has been examined as RW.1 and he has marked Ex.R1 – Insurance Policy and Ex.R2 - Driving Licence.

5. On evaluation of pleadings and evidence, the Claims Tribunal held that no oral or documentary evidence was adduced, by the appellant-Insurance Company to prove that there was no negligence on the part of the driver of the lorry. On the other hand, legal representatives adduced sufficient evidence to prove negligence. At the time of accident, the lorry was covered under valid insurance. Though

the appellant-Insurance Company contended that driver of the lorry had no valid and effective driving licence to drive the vehicle, which was loaded with crackers, at the time of accident, following the decision of the Apex Court in **National Insurance Co. Ltd., v. Swaran Singh** reported in **2004 (1) TNMAC 104 (SC) : 2004 (2) LW 744,** the Tribunal held that the appellant-Insurance Company is liable to pay compensation to the legal representatives of the deceased.

6. Assailing the correctness of the award, Mr.N.Vijayaraghavan, learned counsel for the appellant-Insurance Company reiterated that the driver of the lorry did not possess a licence for the goods vehicle, carrying hazardous goods, as required under law. He also submitted that the Tribunal ought to have granted atleast right of recovery, against the owner of the lorry.

7. Mr.Ma.P.Thangavel, learned counsel appearing for the respondents/claimants submitted that the award passed by the Tribunal is just and reasonable and does not warrant interference.

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

8. There is no dispute that at the time of accident, the lorry bearing Registration No.TN 28 AA 3918, was insured with the appellant-Insurance Company. Upon perusal of Ex.R1 – Insurance Policy, the Tribunal has observed that the above vehicle was insured with the appellant-Insurance Company. In any event, it is the inter-se dispute between the insured and insurer. Third party claimants are not privy to the contract. There is no rebuttal evidence, regarding the manner of accident. Negligence fixed on the driver of the lorry, insured with the appellant-Insurance Company, resulting in the accident, cannot be said to be perverse, as the respondents/claimants, have proved the manner of accident, by adducing evidence through PW.1, mother of the deceased and PW.2, Devadoss, eye-witness to the accident. Testimony of PW.1, mother of the deceased, is duly corroborated by Ex.P1 – FIR. As there is no rebuttal, we are not inclined to interfere, with the finding, fixing negligence on the driver of the lorry.

9. The argument of the learned counsel for the appellant-Insurance Company that the driver of the lorry did not possess a valid driving licence, at the time of accident, is not supported by any evidence. Even assuming that there was a breach or violation of policy condition, as contended, it is the duty of the insurer to prove that the said breach had been committed consciously, by allowing the driver, who did not possess a licence to drive the vehicle. Even if there is a gross violation of statutory provisions, as stated supra, such breach ought to have proved by the appellant-Insurance Company, in the manner, as held by the Hon'ble Supreme Court in various decisions.

10. Though Mr.N.Vijayaraghavan, learned counsel for the appellant-Insurance Company contended that in the absence of valid driving licence, the insurer cannot be mulcted with the liability to pay the compensation amount to the accident victims and then, to recover the same from the owner of the offending vehicle, this Court is not inclined to accept the said contention, for the reason that no steps have been taken by the appellant-Insurance Company to ascertain the licence particulars from the concerned Regional Transport Office. In the absence

of any cogent and acceptable evidence, it cannot be said that the appellant-Insurance Company has discharged their initial burden of non-possession of licence.

11. In view of the above, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount, with proportionate accrued interest and costs, less the amount already deposited, to the credit of M.C.O.P.No.477 of 2009, on the file of the Motor Accidents Claims Tribunal (Principal District Court), Namakkal, within a period of four (4) weeks from the date of receipt of a copy of this order. The respondents/claimants are at liberty to withdraw the compensation, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are also closed.

(S.M.K., J.) (M.G.R., J.)
27.02.2017

Index: Yes/No
Internet: Yes/No

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To

The Motor Accidents Claims Tribunal
(Principal District Court), Namakkal.

S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

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