IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No. 851 of 2017

1. Lakshmi (1st Wife)
2. Minor Kotteeswari
3. Minor Bhuvaneswari
(P2 and p3-MInors are
represented by their mother
Lakshmi)
4. Kannagi (2nd Wife)
5. Minor Vijayalakshmi
6. Minor Sumathi
7. Minor Balaji
8. Minor Vetri Selvi
(P5 to P8 – Minors are represented
by their mother Kannagi) ... Appellants / Petitioners

versus

1. P. Karthikeyan
2. The Oriental Insurance Co. Ltd.,
Divisional Office, Katpadi Road,
Vellore. ... Respondent / Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.09.2014 made in M.C.O.P. No. 605 of 2006 on the file of the Motor Accident Claims Tribunal (Principal District Court), Vellore.

For Appellant : Mr. C. Parbakaran
For Respondent : Mr. S. Monhar

JUDGMENT

The claim petition in M.C.O.P. No. 605 of 2006 has been filled by the claimants 1 to 8, claiming compensation in respect of death of Jayapal on 16.11.2005. 1.1. The deceased Jayapal was aged 45 years and a vegetable vendor and agriculturist (self-employment), earning a sum of Rs.6,000/- per month at the time of accident. He was travelling on a motor vehicle as a pillion rider. The first claimant is the first wife of the deceased and the claimants 2 and 3 are the daughters of the first wife and 4th claimant is the second wife and claimants 5 to 8 are children of the deceased through the 4th claimant, altogether filed a claim petition claiming compensation of Rs. 10,00,000/-.

1.2. As against the claim made, the Tribunal has passed an award for Rs.7,88,000/-.

2. There is an observation given by the Tribunal that the first respondent is the owner-cum-driver and he was in possession of licence to ride the two wheeler.

3. By relying upon the decisions reported in 2008 ACJ 1928 SC (Oriental Insurance Co. Ltd. vs. Zaharaulnish and others), 2010 1 TNMAC 65 (New India Assurance Co. Ltd., Dindigul vs. V.Chandran and another,), 2012 ACJ 791 (Bakak Alianz General Insurance Co. Ltd. vs. Yenni Surya Rao and another), the Tribunal directed the owner/first respondent to pay the compensation by exonerating the Insurance company from paying the compensation.

4. It is essential to cull out the dictum laid down in one of the cases:2008 ACJ 1928 SC (Oriental Insurance Co. Ltd. vs. Zaharaulnish and others):

"Chapter XI of the Motor Vehicle Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicle Act, 1988 inter Alia in terms of Section 149 (2) (a) (ii) of the said Act.

(iii) The breach of policy condition, e.g. Disqualification of driver or invalid driving licence of the driver, as contained in Sub-Section 2(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time,

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defense(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof whereof would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, in as much as the same would depend upon the facts and circumstance 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 license by the driver or his Disqualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving license 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 defense available to the insured under Section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving license produced by the driver, (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's license, the insurance companies would be liable to satisfy the decree.

(ix) The claims Tribunal constituted under Section 165 read with section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insure, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability for defense or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and Se award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defense 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 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."

(xi) The provisions contained in Sub-Section (4) with proviso thereunder and Sub-Section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

18. In the light of the above-settled proposition of law, the appellant insurance company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective license to drive the vehicle on the day of accident. The scooterist was possessing driving license of driving HMC and he was driving totally different class of vehicle which act of his is in violation of Section 10(2) of the MV Act.

5. Now, it is the grievance of the claimants/ appellants that the award has been passed as against the owner and not as against the Insurance Company; if at all, any critical violation of terms and conditions of the insurance policy had been committed by the owner, even then, the Tribunal should have directed the Insurance Company to pay the compensation with liberty to recover the compensation from the owner, as the deceased was a third party and this contention is fortified by the decision cited

supra. It is alleged that this kind of benevolent decision would have helped the claimants to realize the compensation quickly and the same would be the immediate succor for the sudden demise of the deceased, who was the sole breadwinner of the family. Hence, this appeal has been filled.

6. It is relevant to point out that in all the decision relied upon by the Tribunal, pay and recovery has been ordered to the Insurance Company and there is no complete exoneration of Insurance Company from paying the compensation. The dictum laid down in the decision cited supra would be applicable to the facts of this case.

7. In view of the same, this appeal is allowed, directing the Insurance Company to satisfy the award with liberty to recover the same from the owner of the vehicle. To this extent, the appeal stand allowed.

8. The Insurance Company shall deposit the award along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit (excluding the default period if any), within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the major claimants are permitted to withdraw their share of the award amount as per the apportionment made by the Tribunal. The minors' share shall be deposited in fixed deposite scheme, in any one of the Nationalized Banks, for a period of three years, till they attain majority. No Costs. Consequently, connected miscellaneous petition is closed.

22.02.2017

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To

1. The Motor Accident Claims Tribunal
   (Principal District Court), Vellore.

Dr.S.VIMALA, J.
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