BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.02.2017
PRONOUNCED ON : 10.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

C.M.A.(MD)No.172 of 2016
and
C.M.P.(MD).Nos.2626 of 2016 and 1011 of 2017

The Manager,
New India Assurance Co. Ltd.,
77/78, South Veli Street,
Sivakasi Town,
Virudhunagar. .. Appellant/2nd respondent

Vs.

1.Ramaiah

2.Pappathi .. Respondents 1 & 2/Petitioners

3.K.S.Selvaraj .. 3rd respondent/1st respondent

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decreetal order passed in M.C.O.P.No.246 of 2011, dated 07.09.2015, on the file of the Motor Accidents Claims Tribunal cum Subordinate Judge, Srivilliputhur.

For appellant : Mr.G.Prabhu Rajadurai
For respondents 1 & 2 : Mr.M.Karthikeyan
For 3rd respondent : Mr.K.P.Krishnadass,

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.)

This appeal has been filed by the Insurance Company questioning the liability and also the quantum of compensation of Rs.24,65,000/- awarded by the Tribunal in M.C.O.P.No.246 of 2011, dated 07.09.2015, as against a claim of Rs.30,00,000/- made by the first and second respondents herein / claimants.

2.It is the case of the claimants before the Tribunal that on 05.06.2011, when their son by name Suresh, who was studying Engineering College at Coimbatore, was returning to Sankarankovil by riding a two-wheeler bearing Registration No.TN-67-AZ-6447 along with one pillion rider viz., Vairamuthu, on the left side of road, near Duraisamyapuram Bus-stop, the third respondent's van bearing Registration No.TN-67-AZ-7203, which came in the opposite direction in a rash and negligent manner, dashed against the two wheeler of the son of the claimants, due to which the son of the claimants died on the spot. Hence, the claimants made a claim of Rs.30 lakhs as compensation.

3. The Insurance company has filed a counter affidavit before the Tribunal stating that at the time of the accident, the driver of the van did not have valid driving license and hence, the Insurance Company is not liable to pay compensation.

4. In order to prove the claim, on the side of the claimants, the first respondent herein viz., the father of the deceased was examined as PW1 and one eyewitness was examined as PW2 and 12 documents were marked as Exs.P1 to P12. On the side of the appellant/Insurance Company, two witnesses were examined as RW.1 and RW.2. and two documents were marked as Exs.R1 and R2. The Tribunal, after analysing the entire documents, has come to the conclusion that the accident is the result of the rash and negligent driving of the driver of the van and after notionally fixing a sum of Rs.15,000/- p.m. as loss of income and adding 50% of the amount for future prospects and thereafter, deducting $1/3^{rd}$ towards personal expenses and applying multiplier 13, the Tribunal has awarded a sum of Rs.23,40,000/- towards annual loss of income. The Tribunal has also awarded compensation under the other heads and directed the appellant/Insurance Company to pay the entire compensation to the claimants. The break up details of the amount awarded by the Tribunal are as follows;

Loss of income	: Rs.23,40,000/-
Loss of Love and Affection	: Rs. 1,00,000/-
Funeral expenses	: Rs. 25,000/-
Total	Rs.24,65,000/-

Aggrieved by the said award, the appellant/Insurance Company has filed the present appeal.

5. In this appeal, the appellant/ Insurance Company has not only disputed the quantum of compensation awarded by the Tribunal but also the liability of the Insurance Company to pay the compensation to the claimants. The main submission of the appellant / Insurance Company is that a sum of Rs.15,000/- fixed

by the Tribunal as the monthly loss of income of the deceased is excessive and the same must be reduced. Since the driver of the van was not having valid endorsement / badge to drive the commercial vehicle at the time of the accident, the owner of the vehicle viz., the third respondent herein violated the policy condition and thereby, the appellant/Insurance company is not liable to pay the compensation. However, since the driver was holding the light motor vehicle license at the time of the accident, the appellant/ Insurance Company may be permitted to recover the compensation amount from the owner of the vehicle, after paying the same to the claimants. In support of his contention, he relied upon an unreported decision of a Division Bench of this Court in C.M.A.No.2508 of 2008, dated 22.10.2013 and another Division Bench decision of this Court in **Oriental Insurance Co. Ltd., Chennai Vs. Bhola Raut**, reported in **2015(2) TN MAC 162 (DB).**

6. Per contra, the learned counsel appearing for the first and second respondents/claimants submitted that a sum of Rs.15,000/- fixed by the Tribunal cannot be stated to be excessive, since the deceased was studying 3rd year Engineering course. Thus, he prayed for dismissal of the appeal.

7. The learned counsel appearing for the third respondent submitted that at the time of the accident, the driver of the van had valid driving license to drive the light motor vehicles. Therefore, it cannot be said that the third respondent has violated the policy condition and the question of pay and recovery does not arise in this case. In support of his contention, he relied upon the following decisions of the Hon'ble Supreme Court:

(a) **National Insurance Company Limited Vs. Annappa Irappa Nesaria and others** reported in **2008 (1) TN MAC 200 (SC);**

(b) **S.Iyyappan Vs. United India Insurance Company Ltd., and another**, reported in **2013 (2) TN MAC 262 (SC)**; and

(c) **Kulwant Singh and others Vs. Oriental Insurance Company Ltd.**, reported in **2014 (2) TNMAC 666 (SC).**

8. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

9. Admittedly, the deceased was a 3rd year Engineering student. The accident took place in the year 2011. Considering the said fact and also considering various other factors, the Tribunal has fixed a sum of Rs.15,000/- p.m. towards loss of monthly income. This Court is of the considered view that the same cannot be stated to be excessive. So far as the total compensation of Rs.24,65,000/- arrived at by the Tribunal is

concerned, this Court does not find any infirmity. Thus, the first submission of the learned counsel for the appellant is rejected.

10. So far as the liability of the Insurance Company is concerned, it is the submission of the Insurance company that though at the time of the accident, the driver of the van was holding license for driving the light motor vehicle, he was not possessing valid endorsement / badge for driving the commercial vehicle and thereby, the third respondent herein / insured violated the policy condition and hence, the Insurance Company must be permitted to recover the compensation amount awarded by the Tribunal from the third respondent / insured after paying the compensation amount to the claimants.

11. When the similar issue came up for consideration, the Hon'ble Supreme Court in **Kulwant Singh** case, cited supra, by relying upon the decisions of **Annappa Irappa Nesaria** case and **S.Iyyapan** case, cited supra, has held in paragraph Nos.9 to 11 as follows;

> "9.We find the Judgments relied upon cover the issue in favour of the Appellants. In **Annappa Irappa Nesaria** (Supra), this Court referred to the provisions of Section2(21) & (23) of the Motor Vehicles Act, 1988, which are definitions of 'Light Motor Vehicle' and 'Medium Goods Vehicle' respectively and the Rules prescribing the forms for the licence, ie., Rule 14 and Form No.4. It was concluded:
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> "20.From what has been noticed hereinbefore, it is evident that "Transport Vehicle' has not been substituted for 'Medium Goods Vehicle' and 'Heavy Goods Vehicle'. The Light Motor Vehicle continued, at the relevant point of time, to cover both, 'Light Passenger Carriage Vehicle' an 'Light Goods Carriage Vehicle'. A driver who had a valid licence to drive a Light Motor Vehicle, therefore, was authorised to drive a Light Goods Vehicle as well.
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> 10.In **S.Iyyapan** (supra), the question was whether the Driver, who had a licence to drive 'Light Motor Vehicle' could drive 'Light Motor Vehicle' used as a Commercial Vehicle, without obtaining endorsement to drive the Commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:
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> "18.In the instant case, admittedly the

Driver was holding a Valid Driving Licence to drive the Light Motor Vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the Driver did not get any endorsement in the Driving Licence to drive Mahindra Maxi Cab, which is a light Motor Vehicle, the High Court has committed grave error of law in holding that the Insurer is not liable to pay Compensation because the Driver was not holding the licence to drive the Commercial Vehicle. The impugned judgment (Civil Misc. Appeal No.1016 of

2002, Order dated 31.10.2008 (Mad) is, therefore, liable to be set aside.”

No contrary view has been brought to our notice.

11.Accordingly, we are of the view that there was no breach of any condition of Insurance Policy, in the present case, entitling the Insurance Company to recovery rights.”

12.The above decision is squarely applicable to the facts and circumstances of this case, as in this case also, at the time of the accident, the Driver, who had a licence to drive 'Light Motor Vehicle', drove 'Light Motor Vehicle' used as a Commercial Vehicle, without obtaining endorsement / badge to drive the Commercial vehicle. Though this Court in the judgments delivered on the earlier occasions in the case of this nature have given a recovery right to the Insurance Company holding that there is a violation of the policy condition, now in view of the recent judgment of the Hon'ble Apex Court, we are not inclined to grant recovery right to the appellant / Insurance Company. Hence, in the backdrop of the judgment of the Hon'ble Supreme Court reported in 2014(2) TNMAC 666 S.C., this Court does not find any error or infirmity in the order passed by the Tribunal.

13. In the result, this Civil Miscellaneous Appeal is liable to be dismissed and accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Srivilliputhur.

+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 51409
+ 1 CC TO Mr.M.KARTHIKEYAN, ADVOCATE IN SR No. 51395
+ 1 CC TO Mr.K.P.NARAYANAKUMAR, ADVOCATE IN SR No. 51584

GCG
TE/JC/SAR-IV : 04/05/2017 : 6P/5C

Pre-delivery judgment in
C.M.A.(MD) No.172 of 2016 and
C.M.P.(MD).Nos.2626 of 2016 and 1011 of 2017
10.04.2017