BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA(MD)No.216 of 2015
and
MP(MD)No.1 of 2015

The New India Assurance Company Ltd,
Through its Branch Manager,
Office at No.161-A, East Veli Street,
Madurai - 625 001. ... Appellant

Vs.

1.Latha
2.Minor Pandidurai
3.Minor Vijayapandi
4.Minor Kanipandi
5.Krishnan
6.Rakkammal
(Minors 2, 3 and 4 are represented through their mother and next friend Latha, the 1st respondent herein) ... Respondents 1 to 6/ Petitioners 1 to 6

7.M/s.Amirta & Co,
Plot No.19, Jai Nagar 3rd Cross Street,
Ponmani, Thirumangalam Post,
Madurai. ... Respondent No.7/Respondent No.1

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.10.2013 made in MCOP.No.980 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District & Sessions Judge, Tirunelveli.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.P.T.Thiraviam for R1 to R6

Mr.N.S.Kishok Kumar for
Mr.H.Arumugam for R7

JUDGMENT

The insurer has filed this appeal questioning the impugned award dated 07.10.2013 made in MCOP.No.980 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District & Sessions Judge, Tirunelveli on the ground of liability.

2.One Ravi was sleeping near his work site on 08.06.2012 at about 09.45 P.M., at Ettoranipatti @ Subramaniapuram channel. A JCB bearing Registration No.TN 72 F 3701 belonging to the Amrita & Co, Madurai, the seventh respondent herein and driven by one Karthick ran over him. The said Ravi died on the spot. Crime No.155 of 2012 was registered against the JCB driver on the file of Sattur Taluk Police Station. The case since been charge sheeted. The wife and children of the said Ravi filed MCOP.No.980 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District & Sessions Judge, Tirunelveli. The owner of the JCB was made as the first respondent. Since the said vehicle was insured with the New India Assurance Company Limited, the insurer was made as second respondent. The Tribunal passed an award for a sum of Rs.7,56,000/- with interest at rate of 7.5% per annum. Since the JCB was insured with the appellant herein, the appellant was directed to satisfy the award. Aggrieved by the same, the insurer has filed this appeal.

3.Heard the learned counsel on either side.

4.The primary contention raised by the learned counsel appearing for the appellant is that the JCB was driven by one Karthick who was not licensed to drive the same. He would therefore contend that the Tribunal erred in fastening the liability on the insurer. At any rate, the principle of pay and recover ought to have been applied.

5.On the other hand, the learned counsel appearing for the vehicle owner would contend that the vehicle in question namely JCB had an unladen weight of 6870 kgs. Therefore, it can be considered only as a light motor vehicle out of the meaning of Section 221 of the Motor Vehicles Act, 1988. The driver of the JCB undoubtedly possessed the driving license for driving the light motor vehicle. He would therefore contend that the award passed by the Tribunal is sustainable in law.

6.The vehicle in question is a JCB. A look at the dictionary clause of the Motor Vehicles Act would show that the JCB is not included in it. However, it is referred to in Central Motor Vehicles Rules, 1989, Rule 2 (cab) would define "construction equipment vehicle" as including an Excavator also.

Actually, the term "JCB" is a rather reference to the brand of the vehicle. It should be properly referred to as only Excavator.

An Excavator is a construction equipment vehicle in terms of Rule 2(cab) of the Central Motor Vehicles Rules, 1989.

7.It is submitted by the learned standing counsel appearing for the insurer that in the R.C book, the vehicle has been referred to as falling under the category of N1. Rule 2(p) of the Central Motor Vehicles Rules, 1989 states that the "Category N1" vehicle is a motor vehicle used for carriage of goods and having a Gross Vehicle Weight not exceeding 3.5 tonnes.

8.In the present case, the unladen weight of an Excavator is 6870 kgs. Therefore, it cannot obviously be a category N1 vehicle. Since the category N vehicles whether it be N1, N2 or N3 refer to goods vehicles, I am of the view that the said definition cannot apply to the present case. An Excavator cannot be called as a goods vehicle.

9.Coming to the Tamil Nadu Motor Vehicles Rules, it is seen that as per Rule 7, the holder of driving license may apply to the licensing authority for the grant of an authorisation to driven a transport vehicle. The Hon'ble Supreme Court in the decision reported in ***(2017) 2 TNMAC 145 SC (Mukund Dewangan vs. Oriental Insurance Company Limited)*** has held that there is no requirement to obtain separate endorsement to drive the transport vehicle, and that if a driver is holding license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

10.Admittedly, the vehicle in question has been insured with the appellant. Even if the appellant succeeds in demonstrating that the vehicle was driven by a person who was not having a valid effective driving license, still the duty of satisfying the award would fall only on the insurer only. Thereafter, he can proceed to recover the paid amount from the owner. In this case, I am of the view that the insurer has not succeeded in demonstrating that there has been a breach of policy condition.

11.No doubt, as rightly pointed by the learned counsel appearing for the appellant that there is a pleading that the driver was not having the valid effective driving license. But, this is only a general defence taken by the insurer. It is for the insurer to show what was the nature of the driving license that should possessed by the driver and that in this case he did not have such a license. Since the insurer has not succeeded in demonstrating the same in this case, I am of the view that the Tribunal rightly fastened the liability on the appellant insurance company. There is no merit in this appeal. This appeal stands dismissed.

12.The award dated 07.10.2013 made in MCOP.No.980 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District & Sessions Judge, Tirunelveli is confirmed.

13.The appellant insurance company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum, from the date of petition till the date of realization and costs within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited if any. On such deposit, the claimants are entitled to withdraw the same in the same ratio as apportioned by the Tribunal, by filing proper application, less the amount already withdrawn by them, if any. The share of the minor claimants shall be deposited in any one of the nationalized bank and the natural guardian, the first respondent is permitted to withdraw the interest once in three months directly from the bank, till the minors attain majority.

14.This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The III Additional District & Sessions Judge,
   Motor Accident Claims Tribunal,
   Tirunelveli.

2. The Record Keeper, V.R.Section,
   Madurai Bench of Madras High Court,
   Madurai. (2 copies)

+ 1 cc TO Mr.P.T.Thiraviam , Advocate in SR No. 92600
+ 1 cc TO Mr.D.Sivaraman , Advocate in SR No. 92544

skm
AE/KKR/SAR4/09.02.2018/4P/6C

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