IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.10.2018

CORAM

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No. 355 of 2003

M/s.New India Assurance
Company Limited,
Pondicherry. ... Appellant / 4th Respondent

Versus

1. Rani
2. Sri Vidhya
3. Minor Manjula (minor rep. by 1st Respondent herein)
4. Jayalakshmi
5. Rajaiah
6. M/s. Loyal Automobile Pvt. Ltd.,
   Omalur Main Road,
   Salem. (Exparte in Lower Court)

7. C.R. Kumar
8 N.K. Ekambaram
9. Kasilingam (Exparte in Lower Court)
10.M/s.United India Insurance Co. Ltd.
   Branch Office No.1,
   Suramangalam Main Road,
   Salem. ... Respondents / Respondents

(2nd Respondent declared as major and the 1st Respondent is discharged from the guardianship of the 2nd Respondent vide order dated 20.10.2005 and made in C.M.P.No.15713/2005)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act of 1988 against the Judgment and Decree dated 20.11.2001 made in M.C.O.P.No.238 of 1996 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Kallakurichi.

For Appellant : Ms.R.Sreevidhya

For Respondents : No Appearance

JUDGMENT

The sixth respondent before the Tribunal has come forward with this appeal as against the order and Decree dated 20.11.2001 passed in MCOP No. 238 of 1996 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Kallakurichi questioning their liability to pay the compensation.

2. The brief facts leading to the claim petition are as follows :-

On 02.09.1991, the deceased Sadasivam was proceeding in the Bajaj Cub Two wheeler from Attur to Ulundurpet for Registration of the vehicle at R.T.O. Office at Ulundarpet as per instruction of his employer/owner of the vehicle namely the first respondent in the claim petition. He had driven the said vehicle in a minimum speed and at that time, a two wheeler - Silver Plus bearing Registration No.PY-01-2481 driven by the 4th respondent in the claim petition in a rash and negligent manner and dashed against the two wheeler driven by the deceased Sadasivam. The deceased suffered grievous injuries on his head and inspite of the treatment given, he died. The said Bajaj vehicle was registered with the United India Insurance Company/5th respondent in the claims Tribunal. Hence, claiming a compensation of Rs.6,00,000/-, the respondents 1 to 5/claimants herein have filed claim petition before the Tribunal.

3. The Claim Petition was resisted by the sixth respondent/appellant herein by filing a counter denying the age, avocation and negligence on the part of the driver.

4. The Tribunal, on consideration of materials and evidences awarded a sum of Rs.3,50,000/- as compensation and directed the appellant herein to pay the compensation amount. The breakup details are as under :-

Loss of income	:	Rs.3,20,000/-
Loss of consortium	:	5,000/-
Funeral expenses	:	2,000/-
Loss of love, affection to petitioners 1 to 4	:	15,000/-
Medical expenses	:	5,000/-
Transport expenses	:	3,000/-
		Rs.3,50,000/-

5. Aggrieved over the same, the appellant/Insurance Company has filed this appeal challenging the quantum as excessive.

6. The learned counsel for the appellant has argued that the liability fixed on them by the Tribunal is not proper. The two wheeler - Bajaj Cub which was driven by the deceased at the time of accident was insured with United India Insurance Company, the fifth respondent in the claim petition. The vehicle driven by the fourth respondent in the Claim Petition namely Kasilingam was insured with appellant herein. The fourth respondent remained ex-parte before the Tribunal. Further, he has stated that the owner of the two wheeler - Silver plus viz., third respondent in the claim petition had sold the vehicle to the fourth respondent Kasilingam on 06.07.1991 without intimating it to the appellant/ insurance company or to the Regional Transport office and the registration certificate also continued to be in favour of the third respondent in the claim petition. Further, the documents relating to the vehicle with regard to insurance are not in order and the person, who said to be owner of the vehicle did not possess valid driving licence at the time of accident. It is also contended that it was the deceased, who had driven the vehicle in a rash and negligent manner and invited the accident. Hence, neither the 3rd respondent nor the 4th respondent are responsible for the accident.

7. The Tribunal upon analaysing the evidences and documents held that it was the fourth respondent, who had driven the vehicle in a rash and negligent manner and caused the accident and further held that as on the date of accident, the vehicle driven by the fourth respondent was covered with the appellant/insurance company and therefore, they are liable to pay the compensation.

8. The Tribunal placing reliance on the Motor Vehicle Inspector's report, Ex.P2, held that the 3rd respondent is continuing his ownership and only to escape from the liability, the 3rd respondent has stated that he has sold the vehicle to the fourth respondent prior to the date of accident.

9. It is seen from the records that the tribunal while verifying the documents with regard to the transfer of ownership of the alleged vehicle driven by the fourth respondent, observed that the date of accident was on 02.09.1991 and the vehicle was sold by the 3rd respondent to the 4th respondent was on 06.07.1991. In Ex.R1 it is stated that the 4th respondent has filed the delivery receipt on 06.07.1991 and it is also seen that the said transaction was not informed to the insurance company. As per the record, after the sale of the said vehicle, the same came to be insured with the 6th respondent, but the said transaction is not reflected in the RC book and the other documents, due to non information by the 3rd respondent, who sold the vehicle However, it is clear that the

vehicle which was purchased by the fourth respondent, involved in the accident, and the same was insured with the appellant. Hence, the Tribunal has come to the conclusion that the fourth respondent who had driven the vehicle in a rash and negligent manner had caused the accident, hence, fixed the liability on the appellant. In this context, it is relevant to refer the decision of the Hon'ble Division Bench of this Court reported in Balamanohari and another vs. Sri Venkateswara Engineering College and others) 2018 (3) Law Weekly 261 wherein, it was held as follows:-

> "In other words, in the absence of any endorsement or entry in the Certificate of Registration by the Registering Authority as required under Section 50 (6) of the Act, the ownership continued to remain with the transferor and it cannot be construed to have been transferred in favour of the transferee. In the present case, by reason of execution of Exs. R7 and R8, the liability of the first respondent to pay compensation to the claimants cannot be extinguished or ceased and the first respondent continued to be the owner of the vehicle in question. It is needless to mention that for transfer of ownership of a vehicle, such transfer must be intimated to the registering authority and necessary endorsement or seal has to be made in the registration certificate of the vehicle. In the absence of such endorsement made by the registering authority, mere execution of documents, as contended by the first respondent, will not partake the character of a transfer as contemplated under Section 50 (6) and (7) of The Motor Vehicles Act. Therefore, we are of the view that the so-called transfer of ownership made by the first respondent is not in accordance with law.
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> 39. In the present case, admittedly, the vehicle in question was operated without a permit in a public place. Further, as on the date of accident, the vehicle was carrying the students of the second respondent college. Thus, the vehicle in question was operated without even a permit issued by a Motor Vehicle Authority, which is a statutory violation and therefore also, the defence raised by the insurance company is legally sustainable. In other words, on the date of accident, the

offending vehicle is not covered by a valid permit to ply, and therefore, the insurance company cannot be mulcted with any liability to pay compensation. At the same time, we hold that as on the date of accident, the Insurance Coverage in respect of the vehicle in question, is very much in force. Further, even though the Insurance Company succeeds in raising a legal defence, yet it is required to pay the compensation amount to the claimants and thereafter to recover it from the principal owner of the vehicle in question as has been directed by the Tribunal in this case. This principle is adopted to ensure that the compensation amount awarded to the legal heirs of the deceased is swiftly paid by the Insurance Company, being a legal entity, which would add solace and succour to the claimants who have lost their only son at a prime age. In this context, we are fortified by the decision of the Honourable Supreme Court in the case of (National Insurance Company Limited vs. Swaran Singh and others) reported in (2004) 3 Supreme Court Cases 297 wherein in para No.110, it was held as follows:-

"110. ...... (ix) The claim 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 the claimant or claimants on one side and insured, insurer and driver on the others. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the 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 the award made thereon is enforceable and executable in the same manner as provided under 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 defence 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 comelled 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. The certificate will be issued for the recovery 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...."

10. In view of the above observation made by the Hon'ble Division Bench of this Court and taking into consideration the fact, which very well reveals from the documents that at the time of accident, the vehicle involved in the accident is insured with the appellant herein. Hence, this Court concurs with the findings of the Tribunal and there is no discrepancy in the award and decree. This Court is not inclined to interfere with the liability and compensation awarded by the Tribunal.

11. In the result, the award of the Tribunal is confirmed. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any is closed.

12. The appellant / Insurance Company is directed to deposit the entire award amount along with accrued interest and costs as ordered by the Tribunal, less the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount

directly to the bank account of the claimants, as per the ratio of apportionment, fixed by the Tribunal, through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   Subordinate Judge,
   Kallakurichi.

2. The Section Officer,
   Vernacular Section,
   Madras High Court.

+1 cc to Mrs.R.Sreevidhya, Advocate, S.R.No.70249

C.M.A.No. 355 of 2003

NMI(CO)
SSM(17/06/2019)