IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.1689 and 1746 of 1999

CMA.No.1689 of 1999:-
The National Insurance Co.Ltd.,
No.38/751, Anna Salai, Chennai -2. .. Appellant

Versus

1.Selvi ..1st Respondent /Petitioner

2. S.Venkatesh ..2nd Respondent /1st respondent.

CMA.No.1746 of 1999:-

The National Insurance Co.Ltd.,
No.38/751, Anna Salai, Chennai -2. ..Appellant

Versus

1.Kuppu
2.Selvam
3.Sundar ..R1 to R3/ Petitioners 1 to 3

4.Minor Kesavan
5.Selvi
6. S.Venkatesh ..Respondent No.4 /1st respondent.

Prayer in CMA.No.1689 of 1999: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the decree and award dated 22.12.1998 made in M.C.O.P.No.1350/1995 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

Prayer in CMA.No.1746 of 1999: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the decree and award dated 22.12.1998 made in M.C.O.P.No.1823/1994 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

For Appellant/Insurance company
in both the CMAs : Mr. J.Chandran

For Respondents : Mr.J.Mahalingam for R1 in CMA 1689/99
and for RR1 to 3 in CMA 1746/99

R2-Notice dispensed with in CMA 1689/99

COMMON JUDGMENT

The above Civil Miscellaneous Appeals are filed by the 2nd respondent before the Tribunal, viz., the Insurance company, against the decree and award dated 22.12.1998 made in M.C.O.P.No.1350 of 1995 and 1823 of 1994 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

MCOP.No.1350/1995 [CMA.No.1689 of 1999]:-

3.The case of the claimant is that on 02.06.1994 at about 01.45 p.m., while she was standing in the middle of the road at the junction of Tharamani Salai and C.P.T. first cross street, the 1st respondent vehicle bearing Registration No.TN-59-A-9570 came at high speed, dashed against her causing multiple and grievous injuries. The accident occurred due to rash and negligent driving by the 1st respondent driver only. As the owner and insurer of the vehicle, the respondents are liable to pay compensation. The claimant was aged 22 years and as a house wife, she was taking care of entire household works. Due to the fracture on the right side rib and multiple injuries suffered all over the body, she is not able to attend to her work normally. As such, her contribution as house wife to the family is not available. Hence, she claimed a sum of Rs.1,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

MCOP.No.1823/1994 [CMA.No.1746 of 1999]:-

3.The case of the petitioners/claimants in MCOP No.1823/1994 is that on 02.06.1994 at about 01.45 p.m., while the Deceased - Shanmugadevi was standing in the middle of the road at the junction of Tharamani Salai and C.P.T. first cross street, the 1st respondent vehicle bearing Registration No.TN-50-A-9570 came at high speed, dashed against her, causing multiple and grievous injuries and she subsequently died on 06.06.1994, despite treatment. The accident occurred due to rash and negligent driving by the 1st respondent driver only. As the owner and insurer of the vehicle, the respondents are liable to pay compensation. The petitioner/claimant was aged 60 years and by working as a flower vendor was earning Rs.25/- per day. Due to the sudden demise of the deceased - Shanmugadevi, the petitioners/claimants who are the son and daughter of the deceased have lost the monetary contribution of their mother and also lost her love and affection. Thus, the petitioners/claimants seek a sum of Rs.1,50,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioner/claimant, by filing counter and additional counter, the 2nd respondent/Insurance Company contends that there was no negligence on the part of the 1st respondent vehicle driver. It was only due to the negligence of the injured claimant in M.C.O.P.No.1350/1995 as well as the deceased in M.C.O.P.No.1823/1994, who ignoring traffic rules and by walking on the middle of the road, invited the accident. The claim of the petitioner/claimant in both petitions is not admitted. The amount claimed by the petitioners/claimants is highly excessive. The driver of the 1st respondent was in possession of Light Motor Vehicle license and he has no endorsement to drive tourist taxi. Further, the said vehicle was not having valid fitness certificate to operate on the road. The 1st respondent committed violation of policy condition. As such, the 2nd respondent is not liable to pay any compensation. Thus, the 2nd respondent/Insurance Company seeks dismissal of the petitions.

5. Before the Tribunal, M.C.O.P.No.1823 of 1994 and M.C.O.P.No.1350 of 1995 were taken up along with M.C.O.P.No.1897 of 1994 for joint trial. Before the Tribunal the petitioners/claimants examined P.Ws.1 to 5, produced documents Exs.P.1 to P.8 to prove their claim. On the side of the respondents, R.Ws.1 and 2 were examined and document Exs.R.1 to R.4 was marked. The Tribunal, after analysing the evidence on record, found that the negligence of the 1st respondent vehicle driver alone caused the accident passed an award for a sum of Rs.47,000/- in MCOP.No.1350/1995 and award for a sum of Rs.50,000/- in MCOP.No.1823 of 1994, payable by the respondents to the petitioners/claimants.

6. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present Appeals.

7. Heard both sides and perused the available materials on record.

8. The learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal failed to appreciate the evidence on record properly and passed an award for a higher amount. The vehicle involved in the accident was a tourist van and driver has no authorisation to drive such specific kind of vehicles. The Tribunal ought to have dismissed the petition against the 2nd respondent/Insurance Company. Thus, the 2nd respondent/Insurance Company seeks to set aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel for the petitioners/claimants contends that as on date the Apex Court has clearly held that "A driver holding a licence to drive a light motor vehicle can drive a transport vehicle of such class without any endorsement to that effect" and that "no separate endorsement on the licence is required to drive a transport vehicle" and as such, there is no need to have separate batch endorsement and in such circumstances, the Insurance company is bound to pay the compensation and they cannot escape from the liability. Thus, the petitioners/claimants sought for dismissal of the Appeal.

10. The Tribunal, on the basis of evidence of P.W.3 - Saravanan, who is the eye-witness to the accident and also on the basis of Ex.P.5 - F.I.R as well as Ex.P.6 - Rough sketch of the occurrence spot found that the negligence of the 1st respondent vehicle alone caused the accident. Further, P.W.5 stated that the driver of the 1st respondent van admitted his guilt and paid a fine of Rs.2,800/- in the Criminal Case on the file of Metropolitan Magistrate IV, Saidapet. Thus, on the basis of available evidence, the Tribunal, found correctly that the negligence of the 1st respondent vehicle driver alone caused the accident.

11. The petitioner/claimant in M.C.O.P.No.1350/1995 - Selvi stated that she suffered injury in her head and chest and underwent treatment as inpatient for two days in Malar Hospital. The Doctor, who deposed as P.W.4, stated that the petitioner/claimant suffered 30% disability. However, there is nothing on record to show that the petitioner/claimant has suffered grievous injuries and as such, it cannot be stated that she suffered any functional disability. In such circumstances, the Tribunal considering the evidence on record awarded a sum of Rs.47,000/- as compensation to the petitioner/claimant and the same is not seriously disputed. Hence, the same is confirmed.

12. In respect of MCOP.No.1823 of 1994, the Tribunal as per Ex.P.3 - post mortem and Ex.P.4 - Death certificate, fixed the

age of the deceased as 60 years. Even though there is no proof that she was doing flower vendor business, the Tribunal, considering the averment that the deceased was earning Rs.25/- per day fixed her income at Rs.750/- per month. As the number of dependants are 3 in numbers 1/3rd is deducted towards personal expenses. Thus, applying the multiplier of '5', the Tribunal has concluded the loss of dependency as Rs.750x1/3x12x5 = Rs.3,000/-. The Tribunal, considering the fact that the petitioners/claimants are not dependants of the deceased and they are living separately, provided for a sum of Rs.50,000/- as compensation as "No fault liability" to the petitioners/claimants. In the above said circumstances, this court is of the view that there is no need to interfere with the same.

13. Before the Tribunal, R.Ws.1 and 2 Officers of the Insurance Company stated that the driver of the 1st respondent vehicle did not possess valid driving license to drive tourist vehicles and the same amounts to violation of policy condition. They produced the copy of the Insurance Policy as Ex.R.3, Proposal form as Ex.R.4 and the Investigation Report as Ex.R.1. The driving license of the 1st respondent was produced as Ex.R.2. It is true that the driver was having only LMV license without batch endorsement.

14. On the other hand, refuting the same, the learned counsel for the petitioners/claimants relying upon the Apex Court Ruling reported in AIR 2017 Supreme Court 3668 [Mukund Dewangan Vs. Oriental Insurance Company Limited] contended that it is sufficient, if the driver possessed Light Motor Vehicle license, even though there is no batch endorsement and the same will not amount to violation of policy condition and the respondents are liable to pay the award amount. In the said Ruling, it is held as follows:-

> "The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.
>
> "When a driver is authorized to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for

> purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994."

15. Following the above said Ruling, it is clear that possessing Light Motor Vehicle License itself is sufficient to bind the insurer to pay the Award amount and as such, this Court finds no merit in the contention of the 2nd respondent/Insurance Company. Further, the Award passed by the Tribunal is appropriate, just and proper in all aspect. The same does not warrant any interference.

16. In view of the foregoing reasoning, the Civil Miscllaneous Appeals filed by the 2nd respondent/Insurance company have to fail. The point is answered accordingly.

17. In the result, the Civil Miscellaneous Appeals are dismissed. The Award passed by the Tribunal dated 22.12.1998 in MCOP.No.1350 of 1995 and MCOP.No.1823 of 1994 is confirmed. While confirming the quantum of award, the interest rate is reduced from 12% to 7.5% per annum from the date of petition till the date of deposit. The Appellant/Insurance company is directed to deposit the award amount along with proportionate interest and cost, as awarded by the Tribunal in each CMA/MCOP, within a period of six weeks from the date of receipt of a copy of this order, if not already deposited. The Claimants in each MCOP are entitled to withdraw the award amount as apportioned by the Tribunal. The Tribunal shall follow appropriate procedure for disbursal of the award amount. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Bri/nvsri

To

1. The Motor Accident Claims Tribunal,
   IV Judge, Court of Small Causes,
   Chennai.

2. The Section Officer,
V.R.Section, High Court, Madras. [2 copies]

C.M.A.No.1689 and 1746 of 1999

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srg 29/10/2018