IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1314 of 2015

1.Renuka
2.Minor Ranjit
3.Minor Ranjani
Minors rep. by their mother
and Guardian 1st appellant Renuka
4.Chinnathambi ... Appellants / Petitioners

Vs

1.Ashokan

2.G.N.Sivaji

3.The Branch Manager
Sriram General Insurance Co. Ltd.,
No.66, 2nd Floor, City Center Complex,
Thirumalaipillai Road, T. Nagar,
Chennai. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 24.9.2014 passed in M.C.O.P.No.63 of 2013 by the Motor Accidents Claims Tribunal (Principal District and Sessions Court), Tiruvarur.

For Appellants : Mr.C.Munusamy

For Respondents : Mr.S.Dakshnamoorthy (for R3)

No Appearance (for R1 & R2)

JUDGMENT

Calling into question the award dated 24.9.2014 passed in M.C.O.P.No.63 of 2013 by the Motor Accidents Claims Tribunal (Principal District and Sessions Court), Tiruvarur, the present civil miscellaneous appeal is filed by the appellants.

2. The facts in a nutshell are as under: On 04.12.2012 at about 21.00 hours, the deceased Vairakannu was returning in a

Tata Ace van bearing registration No.TN-50 J 0645 to deliver vessels at Pudukudi from Simizhi. When the Tata Ace van turning at Melananachery, the driver of the same drove the same in a rash and negligent manner and due to rash driving suddenly the door was opened automatically and the deceased was thrown out and sustained grievous injuries. Immediately after the accident, the deceased was admitted in Government Medical College Hospital, Tiruvarur and succumbed to injuries. Regarding the accident, a criminal case in Crime No.424 of 2012 was registered by Kudavasal police station against the driver of the Tata Ace van. At the time of accident, the offending vehicle was owned by the 1st respondent insured with the 3rd respondent in the name of the 2nd respondent. The deceased was aged 40 years at the time of accident and was earning Rs.12,000/- per month by doing masonry and agricultural work. Stating that the accident was due to rash and negligent driving of the driver of Tata Ace van, the appellants who are wife, son, daughter and father of the deceased have filed the claim petition claiming compensation of Rs.15,00,000/-.

3. Resisting the claim petition, the 2nd respondent filed counter stating that on 30.7.2012, he had sold the offending vehicle to the 1st respondent and transferred the ownership also and now the vehicle was owned by the 1st respondent. The 2nd respondent was unnecessary party. Moreover, the offending vehicle was insured with the 3rd respondent and if any compensation is payable, the same is liable to pay only by the 3rd respondent.

4. The 3rd respondent filed counter admitting the fact that the 2nd respondent was the owner of the offending vehicle bearing registration No.TN-50 J 0645 and the insurance policy stood in the name of the 2nd respondent for the period from 15.3.2012 to 14.3.2013. It is stated that on 4.12.2012 at about 9.00 P.M., the deceased Vairakannu was travelling in the 1st respondent vehicle bearing registration No.TN-50 J 0645 from Simizhi to Pudhukudi and while the vehicle was nearing Melananchery village, 1st respondent's driver drove the Tata Ace very rash and negligent manner and the door was automatically opened and the deceased fell down from the van. Therefore, there was no cause of action against the 3rd respondent and the claim petition is hit by mis-joinder of parties. Since the accident occurred purely on the fault of the deceased, the 3rd respondent prayed for dismissal of the claim petition.

5. Before the Tribunal, the 1st appellant was examined as P.W.1 and one Raja was examined as P.W.2. Exs.P1 to P7 were marked. On the side of the respondents, 3 witnesses were examined and Ex.R1 was marked.

6. Upon consideration of oral and documentary evidence, the Tribunal held that at the time of accident, the driver of the offending vehicle had no valid driving licence and therefore, the 3rd respondent is not liable to indemnify the claimants and the 1st respondent owner of the vehicle is liable for the act of the driver. Taking the monthly income of the deceased at Rs.6,000/- and deducting one-third towards personal expenses and also adopting multiplier 15, the Tribunal calculated the loss of dependency at Rs.7,20,000/-. Adding conventional damages, the Tribunal awarded total compensation of Rs.7,72,000/- payable with interest at the rate of 7.5% per annum by the 1st respondent. Challenging the finding of the Tribunal that the 1st respondent owner is liable to pay the compensation and also dissatisfied with the quantum, the appellants have filed the present appeal.

7. The learned counsel for the appellants submitted that the Tribunal erred in fastening the liability on the owner of the offending vehicle when the 3rd respondent did not deny the factum of issuance of insurance policy to the offending vehicle covering the date of accident. He would submit that the Tribunal failed to follow the dictum laid down by the Hon'ble Apex Court to the effect that the insurance company is liable to pay compensation to third parties irrespective of the dispute of violation of policy conditions by the insured. The learned counsel further submitted that the Tribunal at least ought to have directed the 3rd respondent to pay the compensation to the appellants at the first instance with liberty to recover the same from the insured. As far as quantum, the learned counsel submitted that the Tribunal failed to consider the future prospects of the deceased and that the total compensation awarded by the Tribunal is very low and prayed for enhancement.

8. Reiterating the findings of the Tribunal, the learned counsel for the 3rd respondent contended that since the driver of the offending vehicle had no valid driving licence to drove the same, the Tribunal rightly fastened the liability on the owner of the offending vehicle and the said finding of the Tribunal is reasoned one. Therefore, prayed for dismissal of the appeal.

9. I have heard Mr.C.Munusmy, learned counsel appearing for the appellants and Mr.S.Dhakshnamoorthy, learned counsel for the 3rd respondent and also perused the materials available on record. No representation on behalf of the respondents 1 and 2.

10. The points arise for consideration are:

(1) Whether the Tribunal was right in fastening the liability on the 1st respondent, owner of the offending vehicle?

(2) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

11. Point No.1:

According to the appellants, on 04.12.2012 at 9.00 P.M., the deceased was returning in the offending vehicle bearing registration No.TN-50 J 0645 from Simizhi to Pudukudi and while the offending vehicle turning Melananchery, the driver of the vehicle drove the same in a rash and negligent manner. At that time, the door was opened automatically and the deceased was thrown out and sustained fatal injuries. The appellants have examined one Raja as P.W.2 to prove that the accident occurred due to the rash and negligent driving of the driver of the Tata Ace van.

12. In his evidence, P.W.2 deposed that he witnessed the accident and only due to rash and negligent driving of the driver of the Tata Ace van, the accident occurred. The appellants have produced Ex.P1-FIR registered against the driver of the offending vehicle. The Motor Vehicle Inspector inspected the offending vehicle and issued Ex.P4- report to the effect that the accident had not occurred due to the mechanical defect of the offending vehicle.

13. The appellants have produced Ex.P2-RC book to show that at the time of accident, the offending vehicle was owned by the 1st respondent. Though the 3rd respondent denied the same, nothing has been produced to show that the 2nd respondent owned the offending vehicle.

14. In his evidence, R.W.1-Junior Assistant working in the Regional Transport Office deposed that at the time of accident, the driver of the offending vehicle had no valid driving licence. The driver of offending vehicle viz., Ravi was examined as R.W.2. In his evidence, R.W.2 admitted that at the time of accident, he was not possessing driving licence to drive the Tata Ace van.

15. Since the driver of the offending vehicle himself admitted that he had no valid driving licence at the time of accident, the Tribunal erred in directing the 1st respondent to pay the compensation. The said finding of the Tribunal is unsustainable for the reason that when the Tribunal finds that the offending vehicle was involved in the accident and that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and also proved that the offending vehicle was insured with the 3rd respondent insurance company at the time of accident, it ought to have directed the 3rd respondent to pay the compensation at the first instance and then recover the same from the owner of the vehicle.

16. In National Insurance Co. Ltd. v. Swaran Singh,(2004) 3 SCC 297, the Hon'ble Supreme Court examined the liability of the insurance company vis-a-vis the owner and held that the liability of the Insurance Company would arise both from contract as well as from statute. Considering the insurer's contractual liability as well as statutory liability vis-a-vis the claims of third parties, the Hon'ble Supreme Court held as under:

> "31. The right of the victim of a road accident to claim compensation is a statutory one. He is a victim of an unforeseen situation. He would not ordinarily have a hand in it. The negligence on the part of the victim may, however, be contributory. He has suffered owing to wrongdoing of others. An accident may ruin an entire family. It may take away the only earning member. An accident may result in the loss of her only son to a mother. An accident may take place for a variety of reasons. The driver of a vehicle may not have a hand in it. He may not be found to be negligent in a given case. Other factors such as unforeseen situation, negligence of the victim, bad road or the action or inaction of any other person may lead to an accident.
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> ....
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> 72. A beneficent statute, as is well known, must receive a liberal interpretation. (See Bangalore Water Supply & Sewerage Board v. A. Rajappa (1978) 2 SCC 213, Steel Authority of India Ltd. v. National Union Waterfront Workers (2001) 7 SCC 1, ITI Ltd. v. Siemens Public Communications Network Ltd.(2002) 5 SCC 510, Amrit Bhikaji Kale v. Kashinath Janardhan Trade (1983) 3 SCC 437 and Kunal Singh v. Union of India (2003) 4 SCC 524)
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> ....
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> 82. Proviso appended to sub-section (4) of Section 149 is referable only to sub-section (2) of Section 149 of the Act. It is an independent provision and must be read in the context of Section 96(4) of the Motor Vehicles Act, 1939. Furthermore, it is one thing to say that the insurer will be entitled to avoid its liability owing to breach of terms of a contract of insurance but it is another thing to say that the vehicle is not insured at all. If the submission of the learned counsel for the petitioner is accepted, the same would render the proviso to sub-section (4) as well as sub-section

(5) of Section 149 of the Act otiose, nor can any effective meaning be attributed to the liability clause of the insurance company contained in sub-section (1) of Section 149. The decision in NEW INDIA ASSURANCE CO.LTD. VS. KAMALA, (2001 ACJ 843= 2001 4 SCC 342) has to be read in the aforementioned context.

83. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed herein before. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading. ...... "

17. After referring to various decisions, in Swaran Singh, supra, the Hon'ble Supreme Court summarised its findings as under:

"110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles 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) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles 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 the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has 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 the 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 a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances 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 licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence 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 defences available to the insurer 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 licence produced by the driver (a fake one or otherwise), does not fulfil 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 licence, 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 insured, insurer and driver on the other. 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 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 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 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. 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.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the 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 Bajaj Allianz General Insurance Co. Ltd., Chennai vs. Samiyathaal and others, reported in 2014 (1) TN MAC 122, this Court held as under:

“8....... as per the dictum laid down by the Apex Court in the celebrated case of National Insurance Co. Ltd., vs. Swaran Singh, 2004 (1) TN MAC 104 (SC), wherein the Three-Judges of the Hon'ble Supreme Court has dealt with the licence and had settled the principles, even where the Insurer is able to prove breach on the part of the insured concerning the Policy condition regarding holding of a valid licence by the driver, the Insurer would not be allowed to avoid its liability unless the said breach of condition is so fundamental. According to the learned counsel it does not make a difference between a fake licence or a expired licence and no licence. Therefore, as per the dictum laid down in National Insurance Co. Ltd. vs. Swaran Singh, 2004 (1) TN MAC 104 (SC); United India Insurance Co. Ltd. vs. S.Saravanan, 2009 (2)

TN MAC 103 (DB); Bajaj Allianz General Insurance Company Ltd. vs. P.Manimozhi and others, 2010 (2) TN MAC 542 (SC); Branch Manager, United India Insurance Co. Ltd., Dharmapuri Town vs. Nagammal and others, 2009 (1) TN MAC 1 (FB): 2009 (1) CTC 1 (FB) : 2009 (1) LW 702; Jawahar Singh vs. Bala Jain & Ors., 2011 (1) TN MAC 641 (SC); and Iffco Tokyo General Insurance Co. Ltd. vs. A.Jafer Sadiq and others, 2012 (1) TN MAC 394 (DB), it is settled that if the insurer establishes that there is a breach of policy condition under Section 149(2)(a)(ii), the Insurance Company though not liable, as it has successfully established its defence, can be directed to pay and recover from the insured. However, the Tribunal being not convinced with the evidences put forth by the Insurance Company directed the Insurance Company to pay the compensation. Considering the submissions made by the learned counsel for the appellant-Insurance Company, this Court is of the view that the driver of the vehicle had no valid licence on the date of accident and hence the Insurance Company is directed to pay and then to recover from the owner."

19. In a catena of decisions, this Court as well as the Hon'ble Supreme Court held that in the case of violation of policy conditions and/or no valid driving licence possessed by the driver of the offending vehicle, the Court/Tribunal has to exercise its discretion and direct the insurer to pay first and then recover the same from the owner of the offending vehicle. At the time of accident, the offending vehicle was duly covered by valid insurance policy issued by the 3rd respondent. In view of the consistent view taken in that regard, this Court is of the view that it would be appropriate to direct the 3rd respondent to pay the compensation amount to the appellants at the first instance with liberty to recover the same from the 1st respondent owner of the offending Tata Ace van later.

20. The appellants have claimed compensation of Rs.15,00,000/- for the death of the deceased Vairakannu. At the time of accident, the deceased was aged 40 years and was earning Rs.12,000/- per month by doing masonry and agricultural coolie work. Ex.P5 is the post-mortem certificate, wherein the age of the deceased was mentioned as 40 years. Based on Ex.P5-post mortem certificate, the Tribunal has taken the age of the deceased as 40 years.

21. Though the appellants have contended that the deceased was earning Rs.12,000/- per month, no proof has been filed to prove the same. In the absence of any proof, the Tribunal has taken the monthly income of the deceased at Rs.6,000/- notionally, which in my considered view is reasonable.

22. The learned counsel for the appellants submitted that the Tribunal has failed to give any addition towards future prospects. When the appellants have failed to prove that the deceased had permanent job, they cannot claim future prospects.

23. Taking the monthly income of the deceased at Rs.6,000/- and deducting one-third towards personal expenses and adopting multiplier "15", the Tribunal calculated the loss of dependency at Rs.7,20,000/-, which in my considered view is reasonable.

24. As far as conventional damages are concerned, the Tribunal awarded Rs.20,000/- towards loss of consortium to the 1st appellant; Rs.30,000/- towards loss of love and affection and Rs.2,000/- for funeral expenses. Since amounts awarded under the aforesaid heads are reasonable, the same are maintained. Thus, the total compensation of the Rs.7,72,000/- awarded by the Tribunal is just and reasonable and the same is confirmed.

25. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed. The total Compensation of Rs.7,72,000/- awarded by the Tribunal is confirmed. The 3rd respondent is directed to deposit the compensation with interest at the rate of 7.5% per annum from the date of petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment and then recover the same from the owner of the vehicle i.e., the 1st respondent. On such deposit, the appellants 1 and 4 are permitted to withdraw their share as apportioned by the Tribunal and as far as the shares of minor appellants are concerned, the same be invested in anyone of the nationalised bank till they attain majority as directed by the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accidents Claims Tribunal,
Principal District & Sessions Judge, Tiruvarur.

+1 cc to M/s.C.Munusamy, Advocate, S.R.No.68624

+1 cc to M/s.S.Dhkshnamoorthy, Advocate, S.R.No.68247

Civil Miscellaneous Appeal No.1314 of 2015

PPA(CO)
SSM(23/07/2019)
SSM(21/08/2019)