IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1952 of 2011
and
M.P.No.1 of 2011

United India Insurance Co. Ltd.,
No.11/392, Shop No.3, Golden Complex,
Calicut Road, Gudalur,
The Nilgiris. ... Appellant/3rd respondent

..vs..

1.Vasantha ... 1st respondent/1st Petitioner
2.Gandhimathi ... 2nd respondent/2nd petitioner
3.Sumithra ... 3rd respondent/3rd petitioner
4.Minor Kannadhasan
(Rep. by his mother and Next
friend Mrs.Vasantha) ... 4th respondent/4th petitioners
5.Biji @ Rathish ... 5th respondent/1st respondent
6.Naveen Murali ... 6th respondent/2nd respondent
7.Sabeer Abammed ... 7th respondent/4th respondent
8.Rajendran ... 8th respondent/5th respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 04.02.2011 made in MCOP.No.52 of 2009 on the file of the Motor Accident Claims Tribunal/The Principal District Judge, Nilgiris at Uthagamandalam.

For Appellant : Mr.T.Ravichandran
For Respondent : Mr.V.Chinnasamy for R1 to R4
Mr.V.Rajesh for R-6

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 04.02.2011 made in MCOP.No.52 of 2009 on the file of the Motor Accident Claims Tribunal/(The Principal District Judge), Nilgiris at Uthagamandalam, the present appeal has been filed by the 3rd respondent/Insurance Company to set aside the award passed by the Tribunal.

2.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3.The case of the petitioners is that on 05.02.2009, the deceased Subramaniam along with his relatives were returning from Pandalur in two Jeeps after attending the marriage function. The deceased was travelling in the Jeep bearing Registration No.TN-04-E-7508, driven by the first respondent and as they approached the place near Elliyas Shop on the Pandalur, the first respondent driver attempted to over take another Jeep going ahead of him bearing Registration No.TN-43-Z-2409 and in that process dashed against the wall on the right side of the road and in the impact, the Jeep capsized and the deceased suffered fatal injuries and died subsequently. The accident occurred due to the negligence of the first respondent's Jeep driver only. At that point of time, the deceased was aged 55 years and was employed as permanent employee in Tamil Nadu Tea Plantation Corporation Limited, getting a monthly salary of Rs.3,000/-. The petitioners who are wife and children of the deceased were depending on his earnings only. Due to the sudden death of the head of the family, the petitioners are suffering from loss of income as well as loss of love and affection of the deceased. Thus, the petitioners seek a sum of Rs.6,00,000/- as compensation from the respondents.

4.On the other hand, opposing the claim petition, the third respondent Insurance company filed counter contending that the accident does not occur in the manner alleged by the petitioners. The claim of the petitioners about the age, avocation and income of the deceased is denied. The accident occurred not due to the negligence of the driver of the Jeep bearing Registration No.TN-04-E-7508 and the respondents 1 and 2 violated the conditions of the policy by permitting to drive the vehicle, which does not have valid permit and fitness certificate, by a person who was not having valid driving licence. The amount claimed by the petitioners is highly excessive. As the violation of policy condition is committed, the 3rd respondent Insurance Company is not liable to pay any amount. Thus, the third respondent Insurance Company seeks for dismissal of the claim petition.

5.Before the Tribunal, the petitioners examined P.W.1 and P.W.2, produced documents Ex.P1 to Ex.P10 to substantiate their claim. On the side of the respondents, R.W.1 and R.W.2 were examined and produced documents Ex.R1 to Ex.R3.

6.The Tribunal, on careful analysis of evidence, found the negligence of the first respondent Jeep driver alone caused the accident, passed an Award for a sum of Rs.2,35,000/- payable by the respondents 1 to 3 to the petitioners and dismissed the petition against the 4th and 5th respondents. Aggrieved over the said findings of the Tribunal, the third respondent Insurance Company has come forward with this present appeal.

7.I have heard the learned counsel appearing for the appellant/3rd respondent Insurance Company and the learned counsel appearing for the respondents 1 to 4/petitioners/claimants and perused the materials available on record.

8.The learned counsel appearing for the appellant/3rd respondent Insurance Company contends that the Tribunal erred in fixing the negligence on the part of the first respondent Jeep driver in the absence of any clear cut evidence. It is further pointed out that on the date of accident, the vehicle which originally belonged to the second respondent was not in his name as the same was sold to 4th respondent on 21.05.2008 itself much prior to the accident and the R.C. Book of the vehicle stands in the name of the 4th respondent Sabeer Ahamed only. While the R.C. Book stood in the name of the 4th respondent on the date of accident, the Insurance Policy was in the name of the second respondent Navin Murali only. The Tribunal failed to consider the fact that the first respondent's driver was not having valid driving licence. While in Ex.P1 First Information Report, the driver name is mentioned as Biju. In Ex.P7 driving licence and Ex.P8 Motor Vehicle Inspector's Report, the name is mentioned as Rathish, which does not have any alias name Biju. The Tribunal also failed to consider the fact that as per Ex.R1 the permitted capacity of the vehicle was only 5 persons, but the vehicle carried more number of persons at the time of the accident. As such the 4th respondent owner alone is liable to pay compensation. Thus, the third respondent Insurance Company sought to set aside the award passed against them by entertaining the appeal.

9.Per contra, the learned counsel appearing for the respondents 1 to 4/Petitioners/claimants contends that the accident occurred due to the negligence of the first respondent Jeep driver alone and as third party claimants, they are entitled to compensation irrespective of the fact whether the policy coverage was transferred in the name of subsequent purchaser of the vehicle or not at the time of the accident. The petitioners/claimants further contends that the award passed by the Tribunal is just and proper. Thus, the petitioners/claimants vehemently opposed the appeal seeking dismissal of the same.

10.Admittedly, the deceased was travelling in the Jeep bearing Registration No.TN-04-E-7508 driven by its driver who is the 5th respondent herein when the accident occurred. The eye witness to the accident who also suffered injuries in the incident while deposing as P.W.2 clearly stated that the Jeep bearing Registration No.TN-04-E-7508 was driven at high speed by the first respondent as he attempted to over took another Jeep bearing Registration No.TN-43-Z-2409 near Eliyas Shop at Pandalur Road, the driver lost the control and dashed against the wall and the Jeep capsized. The Police also registered First Information Report against the first respondent driver only. After completion of investigation, the police laid the charge sheet which is marked as Ex.P10, wherein it is clearly stated that the accident occurred only due to the negligence of the first respondent driver.

11.On the side of the respondents there is no contra evidence, including any eye witness account of the accident. The only contention of the respondents is that the name of the driver of the Jeep is given differently in different documents produced by the petitioner and that itself was go to show that the first respondent was not driving the vehicle. In the claim petition, the name of the driver of the Jeep involved in the accident is stated as Biju @ Rathish. In Ex.P8 Motor Vehicle Inspector's report, the name of the driver is mentioned as Rathish. While in Ex.P8 Charge Sheet, the name of the accused/driver is stated as Biju @ Rathish. The Tribunal after analysing the materials available on record found the person who was driving the vehicle bearing Registration No.TN-04-E-7508 at the time of accident is the first respondent only. In the absence of any contra evidence on the side of the respondents, the conclusion of the Tribunal as stated above is appropriate and does not warrant any interference.

12.The petitioners stated that the deceased was aged 56 years and by working in Tamil Nadu Tea Plantation Corporation limited, was earning a sum of Rs.3,000/- per month. The Tribunal after analysing the evidence of P.W.1/wife of the deceased as well as Ex.P5 wage certificate found that the deceased was earning Rs.3,000/- per month. Further on the basis of Ex.P2 Postmortem Certificate, the Tribunal fixed his age as 56 years. For the said age group, the multiplier to be applied is 8. On that basis, the Tribunal, after deducting 1/3rd of the income towards personal expenses of the deceased, fixed the loss of dependency at Rs.1,92,000/-. The Tribunal also provided Rs.10,000/- towards loss of consortium, Rs.25,000/- towards loss of love and affection, Rs.5,000/- towards funeral expenses and Rs.3,000/- towards loss of estate and totally awarded a sum of Rs.2,35,000/- as compensation. The quantum of award passed by the Tribunal is not seriously contested by the respondents. As such, this Court finds that the accident having taken place in 2009, the quantum of award passed by the Tribunal is appropriate, which is just and proper and the same does not warrant any interference.

13.It is contended by the learned counsel appearing for the appellant/third respondent that on the date of the accident which occurred on 05.02.2009, the vehicle involved in the accident does not belong to the second respondent, as the same was sold to the 4th respondent on 21.05.2008 itself. However, the 4th respondent also contends that he was not the owner on the date of accident, since he sold the vehicle to the first respondent on 01.07.2008 itself. However, it is clear from Ex.R1 copy of registration certificate of the said vehicle, the name transfer was not effected in favour of 4th and 5th respondents, but the Registration certificate remained in the name of the second respondent only. Pointing it out, the learned counsel appearing for the appellant/3rd respondent Insurance Company contended that even though the Insurance Policy coverage was in force, as the name transfer was not effected, they are not liable to pay any compensation. However, refuting the same, the learned counsel appearing for the appellant/3rd respondent pointed out that the irrespective of whether the name transfer is effected or not, the third respondent Insurance Company is liable to pay compensation as the existence of policy coverage is admitted by them. In support of the same, he relied upon the ruling of this Court reported in 2011 (2) TAN MAC 767 in NATIONAL INSURANCE CO. LTD., No.751,ANNA SALAI, CHENNAI-2 Vs. P.MEENA AND 7 OTHERS, wherein it has held as follows:-

> "From the reading of the provisions of sub-section (1) of Section 157 of the Act, it is clear that in the case of transfer of vehicle insured with the Insurer on its transfer, the Certificate of Insurance and the Policy described in the certificate shall be deemed to have been transferred in favour of the persons to whom the motor vehicle is transferred with effect from the date of its transfer. No doubt, sub-section (2) of Section 157, requires that within fourteen days from the date of such transfer, an intimation is required to be given to the Insurer. However, sub-section (2) of Section 157, makes it clear that such intimation is required only for the purpose of making necessary changes in the certificate as regard to the transfer. There is no provision which provides for any consequence on failure to issue intimation of which provides for any consequence on failure to issue intimation of transfer. If there is deeming provision of transfer of Policy, in law, it is deemed to have been transferred. However, when question arises as regard to the liability, since necessary changes which are required to be made in the policy having not been made for

want of intimation, the policy would continue in the name of the original owner. But that does not absolve the Insurer from the coverage of risk of third parties. This aspect of the matter has been considered by the Hon'ble Supreme Court in G.Govindan v. New India Assurance Co. Ltd.,, 1999 (2) CTC 473 (SC) : 1999 ACJ 781 (SC), wherein the Supreme Court on interpretation on the provision of the Act has held that when the Policy of Insurance obtained by the original owner of the vehicle is composite one covering the risks for his person, property(vehicle) and the third party claim, on passing of title the transferee cannot enforce his claim in respect of any loss or damage to his person and vehicle unless there is novation. So far the third party risk is concerned, the proprietary interest in the vehicle is not necessary and public liability continues till the transferor discharge the statutory obligation."

14.Likewise, the Ruling reported in 2012 (1) TN MAC 600 in UNITED INDIA INSURANCE CO. LTD., WEST STREET, MADURAI THROUGH DIVISIONAL OFFICER Vs. PANDIAMMAL AND OTHERS, where in it has held as follows:-

"Section 157, 146 & 147 – Accident after transfer of vehicle and Registration Certificate but without transfer of Insurance Policy – Liability of Insurer in respect of Third party – Whether Insurer liable to indemnify subsequent purchaser/Registration Certificate holder without intimation of Policy to Insurer and without any transfer of Policy in name of transferee – Finding of W.C. Commissioner that since Policy by virtue of Section 157 deemed to have been transferred with effect from date of transfer of ownership and as Policy was in force on date of accident, Insurer liable to satisfy award – Legality – Failure of transferee/transfer to give intimation to Insurer about transfer of vehicle does not cease liability of Insurer so far as third party is concerned – Therefore, Insurer liable to satisfy award – Order of W.C. Commissioner to that effect suffered from no infirmity or illegality."

15.Further, the learned counsel appearing for the respondent 1 to 4/claimants relied upon the ruling reported in AIR 2003 SC

1446 in RIKHI RAM AND ANOTHER Vs. SMT. SUKHRANIA AND OTHERS, wherein it has held as follows:-

> "Wherever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation of transfer to Insurance Company as required under the provisions of the Act. The reasons being as below:-
>
> Insurance against third party is compulsory, and once the insurance company had undertaken liability to third party incurred by the persons specified in the policy, the third party's right to recover any amount is not affected by virtue of the provisions of the Act or by any condition in the policy. Further the Liability of an insurer does not come to an end even if the owner of the vehicle does not give any intimation of transfer to the insurance company."

It is clear from the same, whether the Insurance Company was intimated about the transfer of ownership or not, if the policy was in force, they are liable to pay compensation. In the case on hand, as the insurance coverage was in force, the third respondent/Insurance Company is liable to pay compensation.

16.The learned counsel appearing for the appellant/3rd respondent Insurance Company contended that the first respondent driver was not having valid driving licence and at the time of the accident, the vehicle carried more than the permitted capacity of 5 persons including the driver as per Ex.R1 Registration Certificate. The copy of the Insurance Policy is also produced as Ex.R2. Admittedly, no name transfer is effected as such the second respondent remains the owner of the vehicle and the vehicle was insured with the third respondent Insurance Company as evidenced by Ex.R2.

17.It is pointed out that at the time of the accident more than six persons travelled in the Jeep in violation of Ex.R2 Insurance Policy conditions. It is clear from Ex.R2 that the seating capacity of the first respondent Jeep was 5 including the driver. It is clear from P.W.2 evidence that six persons travelled in the Jeep at the time of accident. In Ex.P1 First Information Report also it is stated that more than six persons travelled in the Jeep. As such, it will amount to clear violation of policy conditions. Further, the failure to inform the third respondent about the change of ownership of the vehicle and carrying more persons permitted will also amount to violation of policy conditions. As such, the contentions of the third respondent Insurance Company that they are entitled to recover the amount from the owner of the vehicle is to be entertained. As stated earlier, it is claimed by the second respondent that the vehicle was sold by him to the 4th respondent prior to the accident itself. In such circumstances, the third respondent is to first satisfy the award since policy was in force on the date of accident and then entitled to recover the same from the owner of the vehicle. The point is answered accordingly.

18.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The sum of Rs.2,35,000/- awarded by the Tribunal dated 04.02.2011 made in MCOP.No.52 of 2009 passed by the learned Principal District Judge, The Nilgiris at Udhagamandalam is hereby confirmed. The Appellant/3rd respondent Insurance Company is directed to deposit the entire award amount of Rs.2,35,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. Then, the Appellant/3rd respondent Insurance Company is permitted to recover the same from the owner the vehicle bearing Registration No.TN-04-E-7508, namely Naveen Kumar/the second respondent in the claim petition in accordance with law. On deposit of the award amount, the petitioners 1 to 3/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. The 4th petitioner is minor, his share amount shall be deposited in any one of the Nationalized Bank till he attain majority. The first petitioner/claimant is permitted to withdraw the accrued interest once in three months. Consequently, connected M.P. is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

rrg

To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
The Nilgiris at Uthagamandalam.

2.The Section Officer,
V.R. Section,
High Court, Madras-104.

+1 CC to Mr.T. Ravichandran, advocate sr 38984.
+1 CC to Mr.V. Rajesh, advocate sr 38908.

C.M.A.No.1952 of 2011

AD(CO)
GSP(05/10/2018)