IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2262 of 2015

Reliance General Insurance Company Ltd.,
Rep. by its Branch Manager,
Having office at N.T.P. Complex,
B1, No.14, Ramasamy Street,
West Mambalam, Chennai. ...Appellant/4th Respondent

..vs..

1.Saroja
2.Mangaiyarkarasi
3.Gomathi
4.Asaithambi
5.Mala ..Respondents 1 to 5/Petitioners
6.Thirumaran
7.Bajaj Allianz General Insurance Co. Ltd.,
rep. by its Branch Manager,
Having office at Prince Tower,
No.25/26, College Road,
Nungambakkam, Chennai.
8.Balamurugan ...6 to 8 Respondents/Respondents 1 to 3

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 30.04.2015 made in MCOP.No.22 of 2012 on the file of the Motor Accident Claims Tribunal/District Court, Nagapattinam.

For Appellant : Mr.S.Arunkumar
For Respondents : Mr.S.Jayanthi for R1 to R5
Mr.Srinivasan Ramalingam for R-7

JUDGMENT

Aggrieved over the finding of the Tribunal dated 30.04.2015 made in MCOP.No.22 of 2012 on the file of the Motor Accident Claims Tribunal/District Court, Nagapattinam, the present appeal has been filed by the 4th respondent/Insurance Company to set aside the order 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 11.10.2009 at about 10.30 p.m., when the deceased was returning home with other persons in Auto bearing Registration No.TN-51-E-4061 in Nagapattinam - Velankanni ECR Road, the driver of the Auto drove the vehicle in a rash and negligent manner and dashed against the two wheeler bearing Registration No.TN-51-E-4096 resulting in grievous injuries to the deceased Mahalingam and other passengers in the Auto. Subsequently, the said Mahalingam died due to the injuries suffered by him. The petitioners are dependents of the deceased Mahalingam. According to the petitioners, the Auto in which the deceased was travelling belongs to the first respondent and the same was insured with the 4th respondent. The negligence of the first respondent Auto driver alone resulted in the accident. The driver of the auto is third respondent herein. Thus, the petitioners contends that due to the sudden demise of Mahalingam, they have suffered loss of income and as such they demand a sum of Rs.6,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim petition, the 4th respondent Insurance company filed counter contending that the accident does not occur as alleged by the petitioners. The driver of the Auto was proceeding at normal speed observing traffic rules. On the other hand, the rider of the motor cycle bearing Registration No.TN-51-E-4096 came on the wrong direction and he did not possess any driving licence. The accident occurred only due to the negligence of the rider of the two wheeler. The claim of the petitioners is exorbitant. Thus, the fourth respondent sought for dismissal of the claim petition.

5. As the petitioners wrongly included the second respondent Insurance Company, they filed counter stating that the offending vehicle was not insured with them and they are unnecessary parties to the proceedings.

6. Before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced documents Ex.P1 to Ex.P5 to substantiate their claim. On the side of the respondents, the respondents examined the staff of RTO Office, Nagapattinam as R.W.1 and produced Ex.R1 to Ex.R3 documents to contradict the claim of the petitioners.

7. The Tribunal, on the basis of available evidence on record, found the negligence of the Auto driver who is the third respondent herein responsible for causing the accident and directed the fourth respondent-Insurance Company to pay a sum of

Rs.5,50,000/- as compensation to the petitioners and dismissed the petition against the other respondents. Aggrieved over the said finding of the Tribunal, the 4th respondent-Insurance Company has come forward with this present appeal.

8. I have heard the learned counsel appearing for the 4th respondent/appellant and the learned counsel appearing for the petitioners/claimants and perused the materials available on record.

9. The learned counsel appearing for the 4th respondent-Insurance Company/appellant contends that the Tribunal failed to consider the fact that the driver of the Auto was not having valid licence and under Rule 36 of the Tamil Nadu Motor Vehicles Rules even if the Auto driver has obtained proper licence from any other RTO, the same ought to have been informed to the original licensing authority. In the case on hand, no such intimation has been given and the same will make it clear that the driver of the first respondent auto was not having valid licence. As such, violation of policy condition is committed and the 4th respondent Insurance Company is entitled to recover the amount from the first respondent who is the owner of the vehicle. It is further contended by the 4th respondent that the award passed by the Tribunal is on the higher side. Thus, the 4th respondent-Insurance Company sought for setting aside the award passed by the Tribunal by allowing this appeal.

10. Per contra, the learned counsel appearing for the petitioners/claimants contends that the Tribunal, on proper appreciation of the evidence, has awarded a just and fair compensation. The accident occurred only due to the rash and negligent driving of the driver of the first respondent auto. The Tribunal has correctly concluded that the said auto driver was possessing valid licence. The respondents has not let in evidence to disprove the petitioners claim. Hence, the conclusion of the Tribunal is just and proper and the same needs no interference. Thus, the petitioners/claimants sought for dismissal of the appeal.

11. The petitioners who are the dependents of the deceased Mahalingam claims that on the fateful day, the deceased Mahalingam along with others was travelling in the Auto which belongs to the first respondent and insured with the 4th respondent, in Nagapattinam - Velankanni ECR Road, around 10.30 p.m., and the Auto was driven by the third respondent herein. As they approached Rettalady bend, the Auto driver, due to the high speed, unable to control the vehicle dashed against the two wheeler bearing Registration No.TN-51-E-4096 causing fatal injuries to the deceased Mahalingam. The eye witness to the occurrence who deposed as P.W.2 stated that he travelled along with the deceased in the Auto and the driver of the Auto was

proceeding at high speed in a rash and negligent manner dashed against the two wheeler. Further, the Police have registered a case against the Auto driver only and the same is evident from Ex.P1 First Information Report. There is no contra evidence on the side of the respondents to disprove the same. Hence, on the basis of P.W.2 eye witness account and the contents of Ex.P1 First Information Report, it is concluded by the Tribunal that the negligence on the part of the Auto driver alone caused the accident. The same is just and proper and needs no interference.

12. The petitioners stated that the deceased was aged about 50 years and was earning a sum of Rs.6,000/- per month by working as agriculture coolie. The quantum arrived at by the Tribunal is not seriously challenged by the 4th respondent-Insurance Company. The only contention raised by the 4th respondent-Insurance Company is that on the date of the accident, the driver of the Auto was having only licence without batch authorizing him to drive the commercial vehicle. As such, there is violation of policy condition and the 4th respondent-Insurance Company should be permitted to recover the award amount from the owner of the vehicle. The 4th respondent-Insurance Company produced the copy of the Insurance Policy as Ex.R1. They have examined the staff of the RTO Office, Nagapattinam as R.W.1 and he produced the copy of the driving licence Master Register as Ex.R3. According to him, the driver of the auto was having licence, but no batch was issued from his office. R.W.1 further stated that it is possible for the driver to obtain necessary batch from some other RTO Office and he is unaware of the same. The Tribunal, on the basis of R.W.1 evidence, concluded that there is possibility of driver obtaining batch from some other RTO Office and therefore, the 4th respondent-Insurance Company cannot escape from his liability. Pointing it out the said conclusion is not proper. The learned counsel appearing for the 4th respondent-Insurance Company contended that as per Rule 36 of the Tamil Nadu Motor Vehicle Rules, if any person obtain batch entry from any other office, the same should be communicated to the original licensing authority and in the present case, no such thing has happened, which will clearly go to show that the Auto driver does not have any batch to drive the passenger vehicle and the same was proved the claim of respondent is correct. For sake of convenience, Rule 36 of the Tamil Nadu Motor Vehicle Rule is extracted hereunder:-

> 36. Intimation of addition to driving licence:- A licencing authority adding under Section 11 to the classes of Motor Vehicle which a driving licence authorises the holder to drive shall, if it is not the authority by which the driving licence was issued, intimate the addition to that

authority in Form LAD.

It is clear from the Rule that if any person obtained batch from some other RTO office, different than the one in which he obtained licence, the other office is duty bound to inform the original licensing authority.

13. In the case on hand, no such communication has been received as stated by R.W.1. It is the duty of the first and third respondent to produce the copy of the driving licence to prove that the third respondent driver was having valid licence. However, they have not chosen to do so. In such circumstances, it is apparent that the respondents 1 and 3 failed to prove the fact of the driver of the auto possessed valid driving licence to drive the auto carrying passengers. In such circumstances, it is clear that the third respondent failed to establish possession of valid driving licence and by permitting him to drive the auto, the owner of the vehicle, the first respondent has committed violation of condition stated in Ex.R1 Insurance policy. In such circumstances, the 4th respondent Insurance company is entitled to recover the award amount from the owner of the vehicle/the first respondent herein for committing violation of the policy condition.

14. In the light of the above discussions, it is clear that the Tribunal erred in dismissing the claim petition against the owner of the offending vehicle who is the first respondent while passing the award only against the insurer of the vehicle, the 4th respondent herein.

15. The Tribunal after considering the evidence on record fixed the age of the deceased at 50 years and the nominal monthly income at Rs.4,500/- after deducting 1/3rd of the income for the personal expenses, awarded a sum of Rs.5,50,000/- as compensation to the petitioners, by applying multiplier 13. The learned counsel for the respondents fairly conceded that he is not challenging the quantum of award passed by the Tribunal. There is no cross objection filed by the petitioners/claimants. Hence, the quantum of compensation awarded by the Tribunal is confirmed.

16. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.5,50,000/- awarded by the Tribunal dated 30.04.2015 made in MCOP.No.22 of 2012 on the file of the Motor Accident Claims Tribunal/District Court, Nagapattinam is confirmed. The 4th respondent/Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5% p.a. from the date of claim petition to till the date of deposit the entire award amount after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order

and thereafter the 4th respondent -Insurance Company/appellant is entitled to recover the same from the first respondent/owner of the vehicle in accordance with law. On such deposit, the petitioners/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To
The District Judge,
Motor Accident Claims Tribunal
Nagapattinam.

+1 CC to Mr.S. Arunkumar, Advocate sr 20164.

C.M.A.No.2262 of 2015

SJ(CO)
SP(13/04/2018)