IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.Nos.2444 of 2015 & 1990 of 2018
and
MP.No.1 of 2015 & CMP.No.7857 of 2018

CMA.No.2444 of 2015:

National Insurance Company Ltd.,
No.751, Anna Salai, Chennai – 600 002.

... Appellant/2nd Respondent

vs

1.M.Annalakshmi
2.S.Muthukumar
3.S.Thangavelu

... Respondents/Petitoner 1 & 2 & 1st Respondent

CMA.No.1990 of 2018:

1.M.Annalakshmi

2.S.Muthukumar

... Appellants

vs

1.S.Thangavelu
2.National Insurance Company Ltd.,
No.751, Anna Salai, Chennai – 600 002.

... Respondents

PRAYER IN CMA.No.2444 of 2015 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 12.02.2015 in MCOP.No.3260 of 2012 on the file of the Motor Accident Claims Tribunal (Special Sub-Judge – II) at Chennai.

PRAYER IN CMA.No.1990 of 2018 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 12.02.2015 passed in MCOP.No.3260 of 2012 on the file of the Motor Accident Claims Tribunal (Special Sub Court No. II to deal with MCOP Cases), Chennai.

For Appellants : Mrs.R.Sree Vidhya in CMA.No.2444/15
Mr.UM.Ravichandran in CMA.No.1990/18

For Respondents : Mr. UM.Ravichandran for R1 and R2 in CMA.No.2444/15

Mrs.R.Sree Vidhya for R2 in CMA.No.1990/18

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

1. The Insurance Company which had suffered an award for a sum of Rs.13,05,000/- for the death of one Suthith Kumar, son of the claimants in a Motor Accident that occurred on 15.06.2012 at about 23.35 hours is the appellant.

2. According to the claimants, the deceased was riding a tricycle along East Coast Road at the extreme left side of the road. A water tanker lorry bearing registration No.TMO-9970 driven in a rash and negligent manner dashed against the tricycle. As a result of the accident, the rider of the tricycle Suthith Kumar suffered grievous injures and died on the spot. Claiming that, being the insurer of the lorry, the 2nd respondent Insurance Company is liable to pay the compensation, the claimants sought for a sum of Rs.12,00,000/- as compensation.

3. The Insurance Company resisted the claim petition contending that the driver of the lorry did not have an authorization to drive a goods carriage particularly a tanker lorry in the form of an endorsement or a badge and hence the Insurance Company cannot be held liable to pay the compensation. In any event the Insurance Company contended that it should be given a right to recover the compensation from the owner of the lorry. On the quantum, the Insurance Company contended that the age, educational qualification and the income of the deceased are not truthfully disclosed in the petition.

4. The Tribunal which heard the claim petition concluded that the accident occurred due to the rash and negligent driving of the lorry bearing registration No.TMO-9970. In coming to the said conclusion, the Tribunal relied upon the FIR registered by

the Police and the fact that there was no suggestion in the cross examination of PW2, who is the defacto complainant regarding negligence of the tricycle rider.

5. On the quantum of compensation, the Tribunal concluded that the deceased was earning a sum of Rs.10,000/- by working as a Sales Man in Venkatesh Provision Stores, Kottivakkam. After deducting 50% towards personal expenses and applying a multiplier of '18', the Tribunal arrived at the total loss of dependency at Rs.10,80,000/-. The Tribunal also awarded a sum of Rs.2,00,000/- towards loss of love and affection to the parents. Awarding a sum of Rs.25,000/- towards funeral expenses, the Tribunal granted a total award of Rs.13,05,000/-. It is this award which is under challenge before us in the appeal.

CMP.No.7857 of 2018:

6. Pending the appeal, the Insurance Company has taken out an application in CMP.No.7857 of 2018 seeking leave to file additional documents. The additional documents that are sought to be filed are the Registration Certificate of the lorry, the Insurance Policy and the License Search Report issued by the Licensing Authority at Meenambakkam. These documents have been filed only to show that the driver of the lorry did not possess a valid driving license to enable him to drive a heavy goods vehicle at the time of the accident. Therefore, according to the Insurance Company, there has been a breach of the policy conditions and it is entitled to seek pay and recovery.

7. We have heard Mrs.R.Sreevidhya, learned counsel appearing for the appellant, Insurance Company and Mr.UM.Ravichandran, learned counsel appearing for the respondents 1 and 2/ claimants. The 3rd respondent owner of the lorry though served has not chosen to enter appearance through counsel, nor does he appeared in person. The 3rd respondent herein who was the 1st respondent in the Original Petition has also remained exparte before the Tribunal.

8. In the affidavit filed in support of the application seeking permission to produce documents as additional evidence, the deponent had stated that the Insurance Company had approached the Licensing Authority for clarification and the said clarification was received in time and hence the same could not be filed before the Tribunal. The clarification issued by the Licensing Authority was received only on 29.06.2015 after the disposal of the claim petition by the Tribunal. The copies of the RC Book were also unavailable since it is a very old vehicle it took some time for the Insurance Company to trace the same and thus there is a delay in filing these documents.

9. We are satisfied with the reasons assigned by the Insurance Company for non-production of these documents before the Tribunal. We are also of the considered opinion that these documents would be of some significance in deciding the question of liability in the appeal. We therefore allow the application in CMP.No.7857 of 2018 and the documents filed along with it viz., License Search Report issued by the Assistant Licensing Authority, Meenambakam, Registration Certificate of the lorry bearing registration No.TMO-9970 and the policy of the insurance dated 25.02.2012 are received in evidence as Exs.R1 to R3.

10. On the question of liability Mrs.R.Sreeevidhya, learned counsel appearing for the Insurance Company would contend that in view of the fact that the driver of the vehicle did not have a valid license authorizing him to drive a heavy goods vehicle, the Insurance Company cannot be made liable.

11. Contending contra Mr.UM.Ravichandran, learned counsel appearing for the claimants/ respondents 1 and 2 would submit that at the best the Insurance Company would be entitled to an order for pay and recovery after paying the compensation. Our attention is also drawn to the recent judgment of the Hon'ble Supreme Court in Mukund Dewangan Vs. Oriental Insurance Co. Ltd., reported in 2017 (2) TN MAC 145 (SC), wherein, the Hon'ble Supreme Court had held that possession of a badge is not necessary for all goods or transport vehicles, taking into consideration the definition of a light motor vehicle in the Motor Vehicle Act.

12. We find that the said judgment may not be helpful to the claimants in this case to fasten absolute liability on the Insurance Company. The Hon’ble Supreme Court had observed that no badge is necessary for driving vehicles which weigh below 7500 kgs since they are also classified as light motor vehicles. In the case on hand from the RC book of the lorry TMO-9970 that has been produced it is seen that it weighs 15240 kgs, therefore it is heavy goods vehicle and it requires better skills of driving. From the search report Ex.R1, it is seen that the driver of the lorry had a license only to drive MCWG (Motor Cycle with Gear), Light Motor Vehicle and transport vehicle. It is also disclosed that there is no badge or endorsement enabling the driver to drive a heavy goods vehicle.

13. We therefore find that there was a violation of policy condition. But the said violation of policy condition cannot operate against the claimants who are 3rd parties to the contract of insurance. Therefore, the Insurance Company is still liable to satisfy the award. It is however entitled to an order to recover the compensation from the owner of the lorry without

taking any separate proceedings.

14. On the quantum, Mrs.R.Sree Vidhya, learned counsel appearing for the Insurance Company would contend that the Tribunal was not right in fixing the monthly income at Rs.10,000/-. She would submit that there is no direct evidence of income. Ex.P9, the salary certificate is also a salary certificate on a letter head.

15. Per contra Mr.UM.Ravichandran, learned counsel appearing for the claimants would contend that the salary certificate has been proved by examining an employer and therefore, the Tribunal was right in fixing the salary at Rs.10,000/- per month. Mr.UM.Ravichandran would also point out that the Tribunal has not taken into account the future prospects.

16. We have examined the rival contentions. From the evidence available it is seen that the deceased was aged about 18 years and was working as sales man in a provision store. Considering the nature of employment and the fact that the accident had occurred in the year 2012 we fix the monthly income at Rs.7,500/-, adding 40% towards future prospects the monthly income for the purposes of calculation of loss of dependency is fixed at Rs.10,500/-. The deceased being a bachelor 50% is deducted towards his personal expenses. Thus worked, the total loss of dependency would be 10500 x 12 x 18 x ½= 11,34,000/-. The Tribunal has granted a sum of Rs.2,00,000/- towards loss of love and affection and the same is reduced to Rs.50,000/-, since the claimants are the parents of the deceased. The award of Rs.25,000/- towards funeral expense is sustained. A sum of Rs.15,000/- is awarded towards loss of estate. Thus the total award would be Rs.12,24,000/- and the same is rounded off to Rs.12,25,000/- with proportionate interest and costs. The award will carry interest at 7.5% per annum from the date of claim petition till date of payment. The Insurance Company is granted six (6) weeks time to deposit the award amount and on such deposit the claimants are entitled to withdraw the same. The Tribunal has granted a sum of Rs.10,00,000/- to the 1st claimant mother and Rs.3,05,000/- to the 2nd claimant father.

17. The compensation awarded in this appeal is apportioned as follows:

--> The mother, 1st claimant would be entitled to Rs.9,50,000/- and --> The 2nd claimant father would be entitled to Rs.2,75,000/-.

On the Insurance Company depositing the award amount the claimants are permitted to withdraw the same. It is made clear that the Insurance Company will be entitled to recover the compensation paid by it from the owner of the lorry without recourse to separate proceedings. The Insurance Company is directed to deposit the award amount as per the Modified award less the amount if any, already deposited with in a period of 6 weeks from the date of receipt of the copy of this Judgment.

18. In fine, the CMP.No.7857 is allowed and the appeal in CMA.No.2444 of 2015 is partly allowed, modifying the award of the Tribunal as stated above. There will be no costs in this appeal.

CMA.No.1990 of 2018

19. This appeal is by the claimants seeking enhancement. In view of the fact that the CMA.No.2444 of 2015 filed by the Insurance Company is partly allowed by reducing the compensation, this appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Exhibits marked on the side of the Insurance Company

in CMA.No.2444 of 2015:

Ex.R1 -- License Search Report issued by the Assistant Licensing Authority, Meenambakam.

Ex.R2 -- Registration Certificate of the lorry bearing registration No.TMO-9970.

Ex.R3 -- The policy of the insurance dated 25.02.2012.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal
Special Sub-Judge-II, Chennai

Copy to
The Section Officer,
VR Section, High Court,
Madras.
+1cc to Mr.UM.Ravichandran, Advocate, S.R.No. 63229
+1cc to Mr.R.Ravichandran, Advocate, S.R.No.63368

SAI(CO)
GSP(22/10/2018)