

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2025 of 2017

Vijayakumar

..Appellant

Versus

1.Ulaganathan

2.The Branch Manager,
United India Insurance Co.Ltd,
Kamalam Complex, No.35,
1st Floor, Kumbakonam Road,
Jayamkondam,
Idayarpalayam Taluk,
Ariyalur District.

..Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 13.04.2016 made in M.C.O.P.No.79 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Judge, Ariyalur.

For Appellants : Mr.S.Kamadevan

For Respondents : Mr.D.Baskaran [for R2]

J U D G M E N T

The Appellant/claimant has filed this appeal against the judgment and decree dated 13.04.2016 made in M.C.O.P.No. 79 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Judge, Ariyalur.

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

3. The case of the petitioner/claimant is that on 11.01.2015, when he was walking towards his home near the Guna fast food hotel in Thichy, Jayakondam Road, the two wheeler owned by the 1st respondent bearing Registration No.TN-61-F-6297 came at high speed dashed against him, resulting in causing fracture in his left leg and ample injury all over his body. He was admitted in the Private Hospital, Ariyalur Golden Hospital as inpatient for more than a week. The accident occurred only due to the negligence of the 1st respondent. At the time of the

accident, the petitioner/claimant was aged 48 and by working as a labour in construction field, he was earning Rs.15,000/- per month. Now due to the injury suffered by him, he was not able to attend to his work as he used to prior to the accident. Due to the permanent disability which prevented him from working as a construction labour, the petitioner/claimant suffered loss of income and hence, he seeks a sum of Rs.10,00,000/- as compensation from the respondents, who are the owner and insurer of the vehicle.

4. On the other hand, opposing the claim of the petitioner/claimant, by filing counter, the 1st respondent disputes the manner of accident alleged by the petitioner/claimant. According to the 1st respondent, while the two wheeler was moving at slow speed, the petitioner/claimant without noticing him, suddenly tried to cross the road and in that process felt before the two wheeler and suffered simple injuries. The 1st respondent vehicle is insured with the 2nd respondent and the rider of the vehicle was having valid license at the time of the accident. Hence, the 1st respondent is not liable to pay any compensation. Thus, the 1st respondent seeks dismissal of the petition.

5. Likewise, opposing the claim of the petitioner/claimant, the 2nd respondent/Insurance Company filed their counter and contended that the claim of the petitioner/claimant is totally false. At the time of the accident, the driver of the vehicle was not having any valid license and he was having only L.L.R. He did not comply with the Provisio of Rule 3 of Central Motor Vehicle Rules, 1989. The accident occurred due to the negligence of the petitioner/claimant, as such the 2nd respondent/Insurance Company is not liable to pay any compensation. Thus, the 2nd respondent/Insurance Company seeks dismissal of the petition.

6. Before the Tribunal, the petitioner/claimant examined himself as P.W.1 and the Doctor, who assessed the disability suffered by the petitioner/claimant deposed as P.W.2. The petitioner/claimant produced documents Exs.P.1 to P.11 to prove his claim. On the side of the respondents R.W.1 and R.W.2 were examined and documents Exs.P.1 to P.5 was marked. The Tribunal, on the basis of available 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.1,92,754/- as compensation. However, the Tribunal held that as the driver of the vehicle possessed only L.L.R and he failed to comply with the Provisio of Rule 3 of Central Motor Vehicle Rules 1989 directed the 2nd respondent/Insurance Company to satisfy the Award at first instance with the liberty to recover the same from the 1st respondent/owner of the vehicle.

7. Aggrieved over the said conclusion of the Tribunal, the

1st respondent/owner of the vehicle has come forward with the present appeal, which the petitioner/claimant as well as the 2nd respondent/Insurance Company have not preferred any Appeal challenging the conclusion of the Tribunal.

8. Heard both sides and perused the available materials on record carefully.

9. The learned counsel for the 1st respondent/Owner/Appellant contends that the Tribunal failed to consider the fact that the driver of the vehicle was having valid license (L.L.R) to drive the two wheeler and as such, the direction to recover the Award amount from the 1st respondent when the vehicle was having proper Insurance coverage with the 2nd respondent/Insurance Company is unwarranted and unsustainable. The conclusion of the Tribunal that the 1st respondent violated the Proviso of Rule 3 of Central Motor Vehicle Rules, 1989 and as such, the 2nd respondent/Insurance Company is entitled to recover the amount from the 1st respondent/owner/appellant is not proper. Thus, the 1st respondent/owner/appellant seeks to entertain the Appeal and to hold that the 2nd respondent/Insurance Company alone is liable to pay the compensation and to modify the Award passed by the Tribunal accordingly.

10. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends the fact that the driver of two wheeler was holding only L.L.R is admitted and as such the burden is on the part of the driver as well as the owner to prove that they complied with the Proviso of Rule 3 of Central Motor Vehicle Rules, 1989. It is further contended that the driver of the two wheeler was not accompanied by the person who was having valid driving license and no sign of "L" Board was displayed in the two wheeler. As such the 2nd respondent/Insurance Company contends that there is clear violation of Proviso of Rule 3 of Central Motor Vehicle Rules 1989, which will amount to violation of policy condition. Thus, the 2nd respondent/Insurance Company contends that the Tribunal has correctly appreciated the evidence on record found that the violation of policy condition is committed by the 1st respondent/owner/appellant and accordingly directed the 2nd respondent/Insurance Company to pay the Award amount at first instance and to recover the same from the 1st respondent - owner of the vehicle at later stage. Hence, the 2nd respondent/Insurance Company seeks dismissal of the petition.

11. The petitioner/claimant/1st respondent herein has not chosen to come forward to oppose the Appeal.

12. The Tribunal, on the basis of available evidence on record, found that the negligence of the 1st

respondent/owner/appellant alone caused the accident passed an award for a sum of Rs.1,92,754/- and as there was violation of policy condition as well as Motor Vehicles Rules, permitted the 2nd respondent/Insurance Company to pay the amount at first instance and then to recover the same from the 1st respondent/Owner of the vehicle. Aggrieved over the said direction of pay and recovery, the first respondent/Owner of the vehicle as come forward with the present Appeal.

13. The only issue agitated by the 1st respondent/owner/appellant is that the Tribunal is not justified in awarding compensation to the petitioner/claimant and also erred in directing the 2nd respondent/Insurance Company to pay the Award amount and then to recover the same from the 1st respondent/owner. The Tribunal found that on the basis of R.Ws.1 and 2 evidence as well as Ex.P.3 - Copy of L.L.R of the 1st respondent/owner/driver and Ex.P.5 - Insurance Policy that the 1st respondent/owner has committed violation of not only the condition of Insurance Policy, but also violation of Motor Vehicles Rules.

14. In the case on hand, it is contended by the 2nd respondent/Insurance Company that the driver of the two wheeler did not display the mandatory 'L' Board on the vehicle and he was not accompanied by qualified driving instructor which will clearly amount to violation of Rule 3 (b) of Central Motor Vehicles Rule 1989. The said fact of 1st respondent/owner/driver of the vehicle possessed only LLR and he was not accompanied by instructor is not disputed by the 1st respondent/owner. However, it is only contended by him that possessing LLR is sufficient and the same is to be treated as valid license and therefore, the Tribunal is not justified in directing pay and recovery of the award amount from the owner/1st respondent/appellant.

15. The learned counsel for the 1st respondent/owner/appellant relied upon the Ruling reported in 2004 (2) TN MAC 13 (DB), [Branch manager, Oriental Insurance Company Limited, Madurai Versus S.Kadarshaw Rowther and others], wherein it is held as follows:-

" 8. It is the claim of the appellant-Insurance Company that the owner of the car has violated the terms and conditions of the policy in allowing the deceased Sikkandar, who was not having a valid driving licence, to drive the car; hence they are not liable to pay compensation as ordered by the Deputy Commissioner. We have already referred to the evidence of R.W.1, owner of the vehicle; R.W.2, regular driver Kaliappan alias Thiagarajan. It is not disputed that the vehicle was covered by a valid policy at the time of the incident. R.W.1 has admitted that the deceased was his employee, namely,

cleaner. The only objection is that neither he possessed with a valid driving licence nor authorised to drive the car. However, R.W.2 has categorically admitted that after parking the car at the Palani bus-stand, he handed over the key to the deceased. Even according to the officer of the Insurance Company, the deceased was having a Learner's Licence (L.L.R) at the time of the accident. Though it is stated that the deceased had not been permitted by R.W.1 to drive the car, in the absence of specific evidence or proof and in view of the admission of R.W.2 that he himself handed over the key to the deceased, both the owner and the Insurance Company cannot escape from their liability. We have already referred to the admitted fact of the Insurance Company that at the relevant time, the deceased was having a Learner's Licence (L.L.R). It is relevant to refer a decision of the Apex Court in National Insurance Company Limited v. Swaran Singh, 2004 (1) A.C.J. 1 : 2004 (1) TN MAC 104 (S.C.), wherein their Lordships have held that "a person holding Learner's Licence would also come within the purview of "duly licensed" as such, a licence is also granted in terms of the provisions of the Motor Vehicles Act the Rules framed thereunder". They further held that even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149 (2) of the Motor Vehicles Act. In the light, of the above dictum and in view of the admitted factual position in this case that the deceased was having a learner's licence at the time of the incident, we hold that the appellant/Insurance Company cannot escape from its liability. We have already held that there is no evidence to show that the owner has violated the terms of the policy. As stated earlier, there is no dispute regarding the quantum of compensation arrived at by the Deputy Commissioner.

16. Likewise, he relied upon the Ruling reported in (2004) 13 SCC 684, [Mahamooda and Others Versus United India Insurance Company limited and Others], wherein it is held as follows:-

"4.We find that the High Court relied on a decision of this Court in New India Assurance Co. Ltd. V. Mandar Madhav Tamble, (1996) 2 SCC 328. The issue related to the liability of an insurer when the offending vehicle is driven by a person holding a learner's licence. The High Court held that in view of the decision in Madhav Tambe Case (1996) 2 SCC 328, the Insurance Company has no liability, though

the Motor Accidents Claims Tribunal, herein referred to as "the Tribunal" had fixed the liability on the Insurance Company. Correctness of the decision in Madhav Tambe Case (1996) 2 SCC 328, came to be considered in National Insurance Co. Ltd. V. Swaran Singh (2004) 3 SCC 297. It was held that Madhav Tambe Case (1996) 2 SCC 328, was decided on the peculiar facts of the case without taking note of the binding precedents. It was categorically held that even when the offending vehicle was driven by a person holding a learner's license, the insurer's liability existed. This position has been clarified in paras 93 and 94 of the judgment.

17. Thus, the learned counsel for the 1st respondent/owner/appellant contends that in the case on hand, as the rider of the two wheeler was having valid LLR as evidenced by Ex.P.3 and the vehicle was insured with the 2nd respondent as per Ex.P.5 - Insurance Policy and the same was in force, the Tribunal is not justified in ordering pay and recovery of the Award amount from him.

18. On the other hand, refuting the same, it is clearly pointed out by the respondents counsel that the rider of the two wheeler possessed only LLR, then it is mandatory to have a instructor with him and also it is compulsory to display 'L' Board in the vehicle. If the said condition is not complied with, then it will clearly amount to violation of Rule 3 (b) of Central Motor Vehicles Rule, 1989 and also condition of Insurance Policy. As such, the 2nd respondent/Insurance Company contended that the Tribunal is justified in ordering pay and recovery and in support of his contention, relied upon the Ruling reported in CDJ 2015 Madras High Court 6319, [P.Marudhachalam and others versus K.Sridhar & others], wherein it is held as follows:-

" 11. The intention of the Legislature namely, Motor Vehicles Act, is to see that the vehicles run properly so that accidents are prevented. Hence, a procedure has been contemplated as to how to get driving licence and learner's licence. There is difference between a Learner's Licence and a Regular Driving Licence. Only after proper testing, driving licence would be given whereas for learner's licence, there is no such requirement. Only to learn, the licence is given and an instructor is required to be always with the learner. Otherwise, the consequences will be dangerous as a learner may land in trouble by causing accidents endangering his life as well as others. Therefore, the said proviso should be strictly construed to qualify Rule 3(b), namely, to ride the vehicle only with an instructor and not

otherwise. If any other interpretation is accepted, then it will go against the very intention of the Legislature. Further, even a perusal of the document marked before this Court as Ex-R5, at the instance of the 1st respondent, would reveal that there is prohibition for the learner to drive the vehicle without being accompanied by an instructor. Therefore, the contention of Mr. Murugamanickam, learned counsel for the 1st respondent cannot be accepted.

12. However, the Tribunal did not look into the matter in proper perspective and fastened the liability on the driver and the owner of the vehicle, namely, respondents 1 and 2 herein. Riding a vehicle without an instructor holding a learner's licence, would only amount to violation of policy condition. If there is violation of policy condition, it is well-settled that the Insurance Company should be directed to pay the amount and recover the same from the owner. Even if the Insurance Company is exonerated of the liability, pay and recovery direction is given only to see that third party victims are benefited in time. In this case also, pay and recovery should have been ordered by the Tribunal. Since the same has not been ordered, this Court, for violation of policy condition, as noted in this case, directs that the amount, which is to be determined as compensation, has to be paid by the 3rd respondent Insurance Company and thereafter, recovered from the owner of the vehicle."

19. Likewise, the learned counsel for the 2nd respondent/Insurance Company, relied upon the ruling reported in CDJ 2016 Kerala High Court 1087, [K.P. Abdul Gafoor Versus New India Assurance Company Ltd.], wherein it is held as follows:-

" Here the appellant, who is the owner-cum-rider was not having a driving licence and he was having only a learner's licence. Going by Rule 3(b) of the Rules, holder of an effective learner's licence while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, has to satisfy all the other conditions specified thereunder including the requirement to be accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor sitting in such a position to control or stop the vehicle. The purpose of relaxation of the rigour of Section 3(1) of the M.V. Act as per Section 3(2) is only for the aforesaid purposes. There can be no doubt that the purpose of granting a 'driving licence' is to authorise the

person concerned to drive the class of vehicle concerned in public place in contradistinction to the purpose of authorising a holder of learner's licence to drive the motor vehicle as a learner. In the contextual situation some relevant aspects are worthy to be considered. Driving/riding a motor vehicle on any public place may cause fatal accident or bodily injury to both pedestrians and passengers inside the said vehicle or other vehicle/vehicles coming in its way. Hence a certain degree of expertise is required to drive a motor vehicle of any class or to ride a motor vehicle. If the insured owner fails to discharge the statutory liability under Section 5 of the M.V.Act, it should visit him with all inevitable consequences. In this context, in this case, the insured-owner himself violated all the aforesaid relevant statutory provisions though, in the light of the conditions in Ext.B1 certificate of insurance as also the condition in Ext.B2 learner's certificate, he was also to scrupulously follow the provisions under Rule 3 of the Rules. In such circumstances, it can be safely concluded that the appellant had violated the conditions of policy as also the condition specifically incorporated in Ext.B2 learner's driving licence besides violating the provisions under 'the Rules' as also 'the M.V.Act' as mentioned above. Above all, in this case, the categorical finding of the Tribunal is to the effect that the claimant, who was a pedestrian, was knocked down or in other words, the accident was caused, solely due to the negligence of the appellant in riding the motor vehicle and as noticed herein before, he rode the vehicle on that crucial day on the strength of a learner's licence issued hardly ten days ago. In such circumstances, it can be said that the respondent herein, the insurer has succeeded in establishing that the appellant herein, who was the owner cum driver of the offending vehicle had violated not only the conditions of policy but also the conditions in the learner's driving licence on the strength of which he has driven the vehicle at the time of accident. In the light of the discussions, we do not find any illegality or error in the judgment of the Tribunal making the insurance company liable to pay the compensation to the third party and at the first instance and at the same time granting the insurance company the right to recover the amount paid to satisfy the award in favour of the third party, from the insured owner."

20. It is clear from the above said Rulings relied upon by the 2nd respondent/Insurance Company that a person having only LLR has to be accompanied by a driving instructor and the 'L' Board is also to be displayed. If the said conditions are violated then the Insurance Company is not liable to comply with the Award. In the case on hand, as rightly pointed by the Tribunal, there is clear violation of the above said Rules and as such, the Insurance Company is entitled to recover the amount from the owner of the vehicle after satisfying the Award at first instance. Therefore, this Court finds no merit in the contention of the 1st respondent/owner to interfere with the conclusion of the Tribunal.

21. The 2nd respondent/Insurance Company has not come forward with any Appeal disputing the aspect of negligence or the quantum of the Award. Therefore, the conclusion of the Tribunal regarding the negligence/liability as well as quantum of the Award is confirmed. As stated earlier, the only contention raised by the 1st respondent/owner/driver of the vehicle has to be negated for the reasons stated above. Thus, the Appeal has to fail. The point is answered accordingly.

22. In the result, the Civil Miscellaneous Appeal filed by the 1st respondent/owner/appellant is dismissed and the order passed by the Tribunal is confirmed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Additional District & Sessions Judge,
Ariyalur.

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

+1cc to Mr.S.Kamadevan, Advocate sr.no.14461

+1cc to Mr.D.Bhaskaran, Advocate sr.no.14764

C.M.A.No.2025 of 2017

nr 23/10/2018