IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2548 of 2010

Shanthi ..Appellant/Petitioner

Vs.

1.R.Pandian

2.The New India Insurance Company Limited
Branch Office,
No.372, T.T.K.Road
Alwarpet, Chennai-600 018 ..Respondents/Respondents

Prayer:- Civil Miscellaneous Appeal filed against the judgment and decree dated 29.07.2008 passed in M.A.C.T.O.P.No.197 of 2007 on the file of Motor Accidents Claims Tribunal, Principal District Court, Thiruvallur.

For appellant : : Mr.K.Varadha Kamaraj
for Respondents : : Mr.J.Chandran for R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Petitioner, challenging the judgment and decree dated 29.07.2008 passed in M.A.C.T.O.P.No.197 of 2007 on the file of Motor Accidents Claims Tribunal, Principal District Court, Thiruvallur.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the Petitioner is that on 07.05.2006, at about 10.30 hours, while the deceased Gopal @ Gopalakrishnan was travelling as pillion rider in a two wheeler bearing Reg.No.TN22-U-1638 towards Poonamallee, the rider of the two wheeler drove the vehicle at high speed in rash and negligent manner and dashed against Buffalo resulting in the pillion rider viz., Gopal @ Gopalakrishnan falling down on the road and suffering fatal injuries resulting in his death on the next day i.e., 08.05.2007 in Government Hospital, Chennai. It is the case of the Petitioner that only due to rash and negligent riding of the two wheeler by its rider, the accident happened and his

son/deceased who was aged 20 years; by working as Mechanic in L&T was earning Rs.6000/- per month. As such she sought for a sum of Rs.6,00,000/- as compensation from the respondents who are the owner and insurer of the said two wheeler.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent-Insurance company disputed the contents of the Petition about the age, avocation and income of the deceased. The accident does not occur in the manner alleged by the Petitioner. The Petitioner has to prove that rider of the two wheeler possessed valid driving licence at the time of the accident. The owner of the two wheeler by permitting unlicenced person to drive the vehicle violated the Policy conditions. As such, the 1st respondent/owner alone is liable to pay the compensation. The claim of the Petitioner is exorbitant. Hence, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.5 to prove her claim. On the side of the respondents, R.W.1 was examined and documents Ex.R.1 and Ex.R.4 was produced to disprove the claim of the Petitioner.

5. The Tribunal, on the basis of available evidence found negligence on the part of the 1st respondent two wheeler rider alone caused the accident and passed award for a sum of Rs.3,60,000/-. However, the Tribunal concluded that rider of the two wheeler was not having valid driving licence and the same amounts to violation of insurance policy condition and held that the 2nd respondent-Insurance company is not liable to pay any compensation and dismissed the petition against them. However, the Tribunal directed the 1st respondent/owner of the vehicle to pay the entire award amount. Aggrieved over the said finding of the Tribunal, the petitioner/claimant has come forward with the present appeal.

6. The learned counsel for the petitioner/claimant contends that the 2nd respondent-Insurance company did not let in any evidence to prove that the rider of the two wheeler was not having valid driving licence. It is further contended that even assuming the rider of the two wheeler was not having valid driving licence it will amount to violation of policy condition only and as such, the 2nd respondent insurer is liable to pay the amount and subsequently recover the same from the owner of the vehicle. Thus the learned counsel for the petitioner/claimant sought to entertain the appeal and to direct the 2nd respondent / Insurance company to pay the amount as valid policy coverage was in force on the date of the accident.

7. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that as there is violation of policy condition, the 2nd respondent/Insurance company is not liable to pay any compensation. Hence, sought for dismissal of the appeal.

8. Before this court, neither side disputed or questioned the conclusion of the Tribunal about fixing negligence on the 1st respondent vehicle rider and about quantum of award passed by the Tribunal. Thus, the conclusion of the Tribunal on the basis of oral evidence of P.W.2 and contents of Ex.P.1-FIR and Ex.P.4-Final report that the negligence of the 1st respondent vehicle driver alone caused the accident has become final and the same needs no interference.

9. It is admitted by both sides that the 1st respondent/vehicle was insured with the 2nd respondent as evidenced by Ex.R.1-Insurance Policy. The involvement of the two wheeler bearing Reg.No.TN-22-U 1638 in the accident as stated in Ex.P.1-FIR and Ex.P.4-Final report is not disputed. As the insured vehicle was involved in the accident, the 2nd respondent-Insurance company is liable to pay compensation. However disputing the same, the 2nd respondent/Insurance company contends that the owner of the vehicle permitted a person without licence to ride the vehicle and the same amounts to violation of policy condition and therefore, they are not liable to pay compensation.

10. Thus the only issue to be decided in this appeal is as to whether the owner of the vehicle permitted an unauthorised person to drive the vehicle and if so, whether the insurer can avoid his liability on that ground ?

11. In the case on hand, the deceased admittedly travelled as pillion rider in the two wheeler bearing Reg.No.TN-22-U-1638 belonging to the 1st respondent and insured with the 2nd respondent. The said vehicle was involved in the accident as mentioned in Ex.P.1-FIR. R.W.1 stated that the rider of the two wheeler did not possess valid driving licence. The 2nd respondent also issued summons in Ex.R.2 and Ex.R.4. On the other hand, there is nothing on record to show that the rider of the two wheeler possessed valid driving licence. As such, the Tribunal has rightly held that the rider of the two wheeler was not having valid driving licence on the date of the accident. After receiving R.W.2 summons also, the owner of the vehicle has not come forward to produce the driving licence of the rider or to contest against the stand taken by the 2nd respondent-Insurance

company. It is therefore clear that the contention of the 2nd respondent viz., rider of the two wheeler did not possess valid driving licence and the same is not contradicted by the other side. As such, the contention of the 2nd respondent-Insurance company is to be accepted.

12. As stated above, the rider of the two wheeler owned by the 1st respondent drove the vehicle without valid licence. The same clearly amounts to violation of Ex.R.1-Insurance Policy conditions. However, the Tribunal erred in holding that "in the light of violation of such policy conditions, the insurer is exempted from paying the compensation amount and only the owner of the vehicle is liable to pay the compensation." In the event of such nature of violation of policy condition, following the principles of various judgments of this court and other courts in different cases, this court is of the considered view that the insurer cannot escape his liability to pay the compensation but has to pay the award amount at first instance and recover the same from the insured.

13. The learned counsel for the 2nd respondent-Insurance company also raised his contentions on the same point of view before this court and as such, the conclusion of the Tribunal that the 1st respondent-owner of the vehicle is liable to pay the compensation and the petition claim against the 2nd respondent-Insurance company is not maintainable is not proper and the same is liable to be set aside. The 2nd respondent-Insurer is bound to compensate the Petitioner and therefore the insurer is directed to pay the award amount to the Petitioner and for the reason of violation of policy condition, the 2nd respondent-Insurer is entitled to recover the same from the 1st respondent/owner of the vehicle. The Point is answered accordingly. The quantum of the award and negligence aspect is not challenged before this court. The conclusion of the Tribunal in respect of Award amount to the tune of Rs.3,60,000/- as compensation to the petitioner and fixing negligence on the 1st respondent vehicle driver is upheld and the same is confirmed.

14. In the result, this Civil Miscellaneous Appeal is disposed of with the following directions:-

(i) The 2nd respondent-Insurer is directed to deposit the award amount of Rs.3,60,000/- with interest at that rate of 7.5% per annum together with proportionate interest and cost before the Tribunal. The 2nd respondent-Insurer is entitled to recover the same from the 1st respondent/owner of the vehicle.

(ii) On such deposit, the appellant/Petitioner is entitled to withdraw the award amount along with accrued interest, by filing necessary application before the Tribunal.

(iii) No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS-vi)

//True Copy//

Sub Assistant Registrar

nvsri

To
1.The Principal District Court,
The Motor Accident Claims Tribunal, Thiruvallur.

2.The Section Officer,
V.R.Section, High Court, Madras. (2 COPIES)

+1cc to Mr.J.CHANDRAN, Advocate, S.R.No.30563
+1cc to Mr.K.VARADHAKAMARAJ, Advocate, S.R.No. 29797

C.M.A.No.2548 of 2010

SVI(CO)
TR(01/08/2018)