IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated :25.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
CMA No.580 of 2009

The National Insurance Company Ltd.,
Branch Office,
Aminjikarai Branch,
29 Pulla Avenue,
Shenoy Nagar,
Chennai 600 030 … Appellant/2nd Respondent

Versus

1. Tmt. K.S. Kasiammal ...1st Respondent/Petitioner

2.P. Sekar …2nd Respondent/1stRespondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 to set aside the Judgment and Decree dated 11.03.2008 made in M.A.C.T.O.P.No. 628 of 2005 on the file of the Motor Accident Claims Tribunal, Poonamallee(Fast Track Court No.III, Poonamallee).

For Appellant : Mr.S. Vadivel

For Respondents : Mr.G. Mannar Mannan (for R1)
Notice Not ready (for R2)

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the findings rendered by the Motor Accidents Claims Tribunal, in M.A.C.T.O.P.No. 628 of 2005, dated 11.03.2008, on the file of the Motor Accident Claims Tribunal, Poonamallee, Fast Track Court No.III, Poonamallee, in fixing the liability on them to pay the compensation amount to the claimant.

2.The first respondent herein is the claimant before the Tribunal. It is the case of the claimant that on 16.05.2005 at about 02.30 hours, when she was proceeding near Ambatture Estate Road, a motor cycle bearing Registration No.T-N-01-P-3103 came in the opposite direction and dashed her. As a result of which she, sustained grievous injuries. Hence, she filed the claim petition claiming a sum of Rs.1,50,000/- as compensation against the owner of the vehicle as well as the insurer of the alleged vehicle.

3.The claim made by the claimant was resisted by the Insurance Company contending that the rider of the vehicle did not possess a valid and effective driving licence at the time of accident, as such there is a violation of the policy condition on the part of the owner of the vehicle; hence, the Insurance Company is not liable to pay any compensation amount to the victim.

4.Before the Tribunal, on the side of the claimant examined herself as PW.1 and five documents were marked as Ex.P1 to P5. On the side of the respondents, one Mr. Jayakmar was examined, who is the employer of the Insurance Company. The Tribunal, on considering the oral and documentary evidence awarded a sum of Rs.85,399/- as compensation to the claimants.

5.The learned counsel appearing of the appellant/Insurance company would contend that at that time of accident the driver of the vehicle does not have any valid license to drive Tipper Lorry.

6. In this connection, RW.1 / Junior Assistant of Regional Transport Office, has produced a photo copy of driving licence of the driver which was marked as Ex.R1, which does not contain any necessary badge endorsement and RW.2/Motor vehicle Inspector has submitted an authorization letter on 22.02.2010 was marked as Ex.R2. Therefore, taking into consideration of the fact that the driver of the vehicle did not possess a valid license to drive the above said vehicle at the time of accident and it is a violation of policy on conditions, the Owner of the vehicle is solely responsible for the cause of accident. Thus, the learned counsel for the appellant prays to allow this appeal on the facts of the case.

7.Furthermore, he contended that the Tribunal has accepted the case of the Insurance Company that there is a violation of the conditions of the policy on the part of the driver, but the Tribunal has directed the Insurance Company is liable to pay the compensation amount to the claimant. Aggrieved over the same, the present appeal has been filed by the Insurance Company.

7.Heard the submissions made on either side and perused the materials available on record.

8.On the point of the quantum, there is no serious objection raised by the appellant/insurance company before this Court. The appellant/Insurance company assailed the award passed by the Tribunal on the ground that the Tribunal did not consider that the driver of the vehicle is liable to pay the compensation and ought to have exonerated them from the liability to pay compensation.

9.As regards the findings of the Tribunal that the compensation amount has to be paid by the Insurance Company, the decision rendered by the Honourable Supreme Court in National Insurance Co. Ltd., Vs. Swaran Singh & Ors., reported in 2004(1) Supreme 243, wherein, it has been categorically held that even though there is a violation of the conditions of the policy, yet the insurance company is liable to pay the compensation to the victim and the same could be recovered from the owner of the vehicle. The relevant portion of the Judgment is extracted hereunder:-

> "48. Under the Motor Vehicles Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof.

10.Further, the aforesaid Judgment rendered in Swaran Singh case supra has been quoted authoratitively by the Honourable Supreme Court in the latest Judgment of the Full Bench of the Honourable Supreme Court in the case of Pappu and others Vs. Vinod Kumar Lamba and another reported in 2018 (2) CTC 232 has specifically held that even though there is a breach of policy condition, yet it is the Insurance Company which has to pay the compensation amount to the claimants and thereafter recover it from the owner of the vehicle. In paragraph 14 of the said Judgment, it is held as follows:-

> "14. The next question is: Whether in the fact situation of this case the Insurance Company can be and ought to be directed to pay the claim amount, with liberty to recover the same from the Owner of the vehicle (Respondent No.1)? This issue has been answered in the case of National Insurance Co.Ltd., (supra). In that case, it was contended by the Insurance Company that once the defence taken by the Insurer is accepted by the Tribunal, it is bound to discharge the Insurer and fix the liability only on the Owner and/or the Driver of the vehicle. However,

this Court held that even if the Insurer succeeds in establishing its defence, the Tribunal or the Court can direct the Insurance Company to pay the Award amount to the Claimant(s) and, in turn, recover the same from the Owner of the vehicle."

11.In the aforesaid Judgments, the appellant/Insurance company has to pay and recover the compensation amount from the owner of the vehicle. Therefore, this Court is of the considered view that the appellant insurance company is entitled to recover the amount after paying the compensation amount to the claimants. Thus, the Insurance Company has to pay the compensation amount to the claimants with liberty to recover it from the owner of the vehicle.

12.That apart, the Tribunal has awarded Rs.85,399/- as total compensation to the claimants, under the various heads for partial disability Rs.45,000/- , for pain and suffering a sum of Rs.5,000/-, for loss of income Rs.10,000, towards medical expenses a sum of Rs.23,399/ and for Transport Expenses Rs.2,000/- The compensation amount awarded by the Tribunal under the various heads appears to be very reasonable. Accordingly, the compensation amount award of the Tribunal is hereby confirmed and kept intact.

13. In fine, the Civil Miscellaneous Appeal is partly allowed with the above modification of pay and recover. After such deposit being made the claimant is permitted to withdraw the award amount. No costs. Consequently, connected miscellaneous petition is closed.

-Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

smn

To

1. The Motor Accidents Claims Tribunal
   Fast Track Court No.III, Poonamallee.

Copy to

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

+1 cc to M/s.S.Vadivel Advocate sr28240
+ cc to M/s.Mannar Mannan Advocate sr28848

CMA No.580 of 2009
and
M.P.No.1 of 2009

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aa24/09/2019