IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1883 to 1887 of 2012
and
M.P.Nos.1 of 2012(5)

The Oriental Insurance Co.Ltd.,
Katpadi Road,
Gudiyatham. … Appellant in all the C.M.As.

Versus

- 1. Savithiri

2.Babu

3. Jamuna

4. Kumaresan … Respondents 1 to 4 in C.M.A.No.1883/2012

P. Amaravathy … First Respondent in C.M.A.No.1884/2012

S.Hamasa … First Respondent in C.M.A.No.1885/2012

K. Jayalakshmi … First Respondent in C.M.A.No.1886/2012

K. Vasantha … First Respondent in C.M.A.No.1887/2012

Raj Mohammed … Fifth Respondent in C.M.A.No.1883/2012 & Second respondent in C.M.A.Nos. 1884 to 1887/2012

Ravi Kumar … Fifth Respondent in C.M.A.No.1883/2012 & Third respondent in C.M.A.Nos. 1884 to 1887/2012

Common Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the common award and decree dated 24.11.2010 passed in M.C.O.P.Nos 358, 230 231, 232 and 233 of 2007 respectively on the file of the Motor Accident Claims Tribunal, [Subordinate Judge], Gudiyatham, Vellore District.

In C.M.A.No.1883/2012

For Appellant : Mr.R. Sivakumar
For RR1 to 4 : Mr. T. Dhanyakumar
For RR-5 and 6 : No Appearance

In C.M.A.No.1884 to 1887/2012

For Appellant : Mr.R. Sivakumar
For R1 : Mr.I. Paul Noble Devakumar
For RR-2 and 3 : No Appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been preferred by the Insurance Company against the common award and decree dated 24.11.2010 passed by the Motor Accident claims Tribunal, [Subordinate Judge]. Gudiyatham, Vellore District, in M.C.O.P.Nos.358,230,231, 232 and 233 of 2007 respectively.

2.Since all the above five civil miscellaneous appeals arise out of the same accident and as against the same award passed by the Tribunal, all are taken up together and disposed of by way of this common judgment.

3. Regarding the manner of the accident and the negligence on the part of the driver of the vehicle, there is no dispute in these appeals.

4. The Insurance Company is the appellant herein and respondents 1 to 4 in CMA No. 1883/2012 and the first respondents in CMA Nos.1884 to 1887/2012 are the claimants. The sixth respondent in CMA No.1883/2012/third respondent in Cma Nos. 1884 to 1887/2012 is the owner of the vehicle involved in the accident.

5. The brief facts, which are necessary for the disposal of all the appeals, are as follows:

(i) On 10.06.2007 at about 3:15., the deceased namely, Vajiravel and other claimants were proceeeding in a Mahendra Van bearing Reg.No. TN.55-B-2295 from Gudiyatam to Pernambut near Seralapali Village. At that time, the van was driven by its driver in a rash and negligent manner and the driver also applied sudden brake, and as a result of which, the said vehicle dashed against a tamarind tree. Due to the accident, the deceased and other claimants sustained grievous injuries all over the body and they were immediately taken to Government Hospital, Pernambut. Unfortunately, the said Vajiravel succumbed to injuries and died in Vellore Government Hospital, when he was taken further treatment.

(ii) Hence, the legal heirs of the deceased, namely his wife, two sons and one daughter, have filed the claim petition in M.C.O.P.No. 358 of 2007 before the Motor

Accidents Claims Tribunal, claiming compensation of Rs.20,00,000/- The first respondents in CMS Nos.1884 to 1887 of 2012, who sustained injuries also have filed a seperate petitions before the Tribunal in M.C.O.P.Nos.230, 231, 232 and 233 of 2007 respectively claiming compensation of Rs.30,000/- 25,000/- Rs.20,0000 and Rs.50,000 respectively.

6. Before the Tribunal, on the side of the claimants, 7 witnesses were examined as P.W.s 1 to 7 and 12 documents were marked as Exs.P.1 to P.12 and on the side of the respondents, 5 witnesses were examined as Ws. 1 to 5 and 5 documents were marked as Exs. R.1 to R.5.

7. Before the Tribunal the Insurance Company has filed a counter stating that the Insurance policy stands in the name of Raja Mohamed and the said Ravi Kumar, who is the subsequent purchaser of the vehicle, has not transferred the polity into his name. It is further stated that the driver of the vehicle does not possess any valid driving license at the time of the accident.

8.The Tribunal, after considering both oral and documentary evidence adduced on either side, has awarded a sum of Rs.5,63,000/- as total compensation to the claimants in M.C.O.P.Nos.358 of 2007 along with interest at 7.5% from the date of claim petition till the date of deposit and with costs and for the claimants in M.C.O.P.Nos.230,231,232 and 233 of 2007, the Tribunal has awarded Rs.10,000/- each as compensation along with interest a7 7.5% from the date of claim petition till the date of deposit and with costs. Challenging the said common award passed by the Motor Accident Claimants Tribunal, the Insurance company has come forward with the above present appeals.

9. According to the learned counsel for the apellant/Insurance company, the Insurance company cannot be made liable to pay compensation when the driver of the offending vehicle does not posses any valid driving license at the time of the accident and hence, he prays for allowing of these appeals.

10. Per Contra, the learned counsel appearing for the claimants would contend that the award passed by the Tribunal is just and reasonable and hence, prays for dismissal of all these appeals.

11. It is seen that on the side of the Insurance Company, R.W.1, who is the staff from the insurance company, was examined and Ex.R.1- Insurance policy copy and Ex.R.2- Investigation Report and also Ex.R-3-Xerox copy of the Motor vehicle Inspector's report were marked. As per the M.V.I Report Ex.R.3, on the date of the accident, the offending

vehicle does not posses necessary Fitness Certificate and the vehicle is having valid Insurance policy coverage and the driver of the vehicle does not posses any valid driving license and batch.

12. R.W.2- Vijaykumar, who is the staff from the RTO Office, had deposed that on the date of the accident, the vehicle has not possessed any Fitness Certificate. R.W.3, who is the another staff from the RTO Office, had deposed that initially, the Fitness Certificate issued to the vehicle had expired on 28.05.2007 and subsequently, renewed on 20.09.2007 and it expire on 19.09.2008. The date of the accident is 10.06.2007 and thus, this Court finds that on the date of the accident, viz., 10.06.2007, the vehicle owned by the third respondent [before the Tribunal] does not posses necessary Fitness Certificate.

13. In the decision reported in 2013 (2) TN MAC 515 (DB) [The Manager, United India Insurance Company Ltd., Vs. Balakrishnan and others in C.M.A.No.s 1441 & 1442 of 2009], a division Bench of this Court has held that, if the offending vehicle does not posses valid Fitness Certificate on the date of the accident, the insurer is liable to pay the compensation to the third party claimant and the Insurance Company shall recover the same from the owner. In view of the above decision coupled with the above factual findings of the present case, that, on the date of hte accident, the offending vehicle does not posses Fitness Certificate, 'pay and recovery' has to be ordered in all the MCOPs.

14. The next contention of the learned counsel for the appellant/ Insurance Company that on the date of the accident, the driver does not posses valid driving license and relied upon Ex.R.4-Xerox copy of D.C.B. Register extract , wherein the investigator has obtained statement from the driver Vinayagam. For the reasons best known, the driver of the vehicle was not examined before the Court, though the alleged statement given by the driver of the vehicle was marked as Ex.R.2. R.W.5 is the Sub Inspector of Police, Parnambut police station and he had deposed that in 304(A) IPC, during the course of the investigation, the driver of the vehicle gave a statement and Xerox Copy of the same was marked as Ex.R.5. It remains to be stated that Ex.R.5 was recorded by the investigation officer and hence, the alleged statement given by the said driver to the police during the course of the investigation cannot be relied as a matter of evidence.

15. It is seen that Ex.R.5 is in the form of a letter said to have been written by one Vinayagam S/o. Kannan to the Sub Inspector of Police, Parnambut police station, wherein he has stated that the said person is working as a driver in the Mahindr Van bearing Registration No.TN-55-B-2295 for 20 days.

However, for the reasons best known, the said driver namely Vinayagam was not examined before the Court and furthermore, reliance was placed on Ex.R.3-Xerox copy of the Motor Vehicle Inspector's report wherein it is only stated that the driving license was not produced. At this juncture, it remains to be stated that the police has registered a case in the above said Crime No.411 of 2007 for the alleged offence under Sections 279, 338 and 304(A) IPC and no case has been registered for the alleged offence of non possession of driving license and hence, the Tribunal has rightly come to the conclusion that Exs. R.3,R.4 and R.5 does not advance the case of the respondents and further held that when the insurance company pleaded that the driver of the vehicle does not posses any valid driving license, the burden is upon the insurance company to discharge the burder of proof to that effect and for the reasons stated supra, this Court is of the considered view that the insurance company has not discharged the burden of proof with regard to the said plea of non possession of valid driging license by adducing any positive evidence in the manner known to law and accordingly, the finding of the Tribunal in this regard is hereby confirmed and hence, in view of the decision stated supra, as the vehicle does not posses the required Fitness Certificate on the date of the accident, the appellant herein/insurance company is hereby required to pay the compensation amount awarded by the Tribunal and recover the same from the owner of the vehicle.

16. Quantum of compensation in all the MCOPs. The Tribunal after considering various aspects has awarded just and reasonable compensation and the same cannot be said to be excessive and accordingly, the same is hereby confirmed.

17. In the result,

(i) All the Civil Miscellaneous Appeals are allowed in part to the limited extent indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

(ii) The quantum of compensation awarded by the Tribunal in all the MCOPs are upheld

(iii) The award passed by the Tribunal in M.C.O.P.Nos.358,230,231,232 and 233 of 2007 respectively with regard to the liability alone is modified and pay and recover is ordered.

(iv) The appellant herein is directed to 'pay' the entire compensation to the claimants in all the M.C.O.P.Nos.358,230,231, 232 and 233 of 2007 respectively and then 'recover' the same from the ownwer of the vehicle viz., Mahendira Van bearing Registration No.TN-55-B-2295.

(v) It is brought to the notice of this Court that Insurance Company has already deposited the entire compensation amount awarded by the Tribunal to credit of respective McOPs. It is open to the Insurance Company to 'recover' the same from the owner of the vehicle in the manner known to law.

(vi) The claimants 1 to 4 in M.C.O.P.No.1883 of 2012 are permitted to withdraw their respective amounts, after following due process of law. The apportionment granted by the Tribunal shall be kept intact.

(vii) The claimants in M.C.O.P.No. 1884 to 1887 of 2012 are permitted to withdraw the respective amount after following due process of law.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

smn
To

1.The Motor Accidents Claims Tribunal,
Gudiyatham, Vellore District/Sub Judge, Gudiyatham.

2.The Section Officer,
VR Section, High Court, Madras-104.

+5cc to Mr.R.Sivakumar, Advocate SR.30306,30307,30308,
30309,30310
+1cc to Mr.T.Dhanya Kumar, Advocate SR.31262

CMA No.1883 to 1887 of 2012

SS(CO)
CB(08/09/2020)