IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :20.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.655 of 2011

United India Insurance Co.., Ltd.,
5B/11, SBI, Upstairs, Salem Road,
Rasipuram Taluk, Salem District,
Divisional Office, 104-A,
Peramanur Road, Salem - 7. ...Appellant/Respondent

Versus

1.Muniappan

2.Minor Vignesh
3.Minor Anitha
(Minors are rep.NF. Guardian
Grand Mother Rasamma)
4.Karuppannan
5.Rasamma ...Respondents 1 to 5 / Claimants

6.E.S.Usila ...6th Respondent / Owner of the Vehicle

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the award and decree dated 12.08.2010 made in M.C.O.P.No.803 of 2007 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge) at Salem.

For Appellant : Mr.T.Ravichandran

For Respondents : Mr.A.Kumar (for R1 to R5)

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the findings rendered by the Motor Accidents Claims Tribunal (I Additional District Judge), Salem, in and by award dated 12.08.2010 made in M.C.O.P.No.803 of 2007, in fixing the liability on them to pay the compensation amount to the claimant.

2.The respondents 1 to 5 herein are the claimants before the Tribunal. According to the claimants, they are the husband, son, daughter, Father-in-law and Mother-in-law of the deceased Eswari. It is the case of the claimants that on 18.12.2006 at about 09.30 hours, when the said Eswari was riding her bicycle, a Tipper Lorry bearing Registration No.TDM-1902, owned by the 5th respondent herein and insured with the appellant herein, came from the same direction in a rash and negligent manner without making any horn and hit behind the bi-cycle and caused the accident. As a result of which, the said Eswari, sustained grievous injuries and died on the spot. Hence, her legal heirs/claimants have filed the claim petition claiming a sum of Rs.10,00,000/- lakhs as compensation as against the owner of the vehicle as well as its insurer/appellant herein.

3.The claim made by the claimants was resisted by the Insurance Company contending that the driver 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 victims.

4.Before the Tribunal, on the side of the claimants, the mother of the deceased was examined as PW.1 and Father was examined as PW.2 and two documents were marked as Ex.P1 & P2. On the side of the respondents, one Sriranganathan / Junior Assistant of Regional Transport Office, Salem was examined as RW.1 and one S.Krishnamoorthy/Motor vehicle Inspector was examined as RW.2 besides five documents were marked as Ex.R1 to R5. The Tribunal, on considering the oral and documentary evidence awarded a sum of Rs.4,55,000/- 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. 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.

6.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 of the sixth respondent's vehicle, however, the Tribunal has directed the Owner of the vehicle and the Insurance Company to jointly and severally pay the compensation amount to the claimants. 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.The above contention of the Insurance Company cannot be countenanced in the light of the decision rendered before the Hon'ble Supreme Court of India in the case of [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,] reported in AIR 2017 SC 3668, wherein it has been held that a person who has a valid licence to drive a light motor vehicle can drive a vehicle of same category and obtaining endorsement or badge is not necessary. In view of the Judgment of the Hon'ble Supreme Court referred to above, the appellant/Insurance Company cannot be exonerated from its liability on the ground that the driver of the insured vehicle did not obtain endorsement or badge.

10.As regards the findings of the Tribunal that the compensation amount has to be jointly and severally paid by the appellant and the owner of the vehicle, such a finding rendered by the Tribunal cannot be found fault with in view of 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.

11.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."

12.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 and they cannot be exonerated from the liability. Thus, the Insurance Company has to pay the compensation amount to the claimants with liberty to recover it from the owner of the vehicle.

13.That apart, the Tribunal has awarded Rs.4,55,000/- as total compensation to the claimants, under the various heads of Loss of estate a sum of Rs.4,32,000/- and for Loss of Love and Affection a sum of Rs.20,000/- and towards funeral expenses a sum of Rs.3,000/. 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 keep intact.

14. In fine, the Civil Miscellaneous Appeal is partly allowed with the above modification. It is reported before this Court that the Appellant/Insurance Company has deposited the entire award amount. Hence, the respondents 2 to 5 are permitted to withdraw their respective shares as assessed by the Tribunal with accrued interest thereon. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Accidents Claims Tribunal
   (I Additional District Judge) at Salem.

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

+1 cc to M/s.T.Ravichandran, Advocate, S.R.No.16243

+1 cc to M/s.A.Kumar, Advocate, S.R.No.16479

CMA No.655 of 2011

CNR(CO)
SSM(04/09/2019)