IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.10.2018

Delivered on : 05.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.Nos.812, 813 and 835 of 2015
and
M.P.Nos.1, 1 and 1 of 2015

CMA.No.812 of 2015

Royal Sundaram Alliance General Insurance Co. Ltd.,
Rep. by its Manager,
Sundaram Tower, No.45 & 46, Whites Road,
Chennai-4. … Appellant/2nd Respondent

Vs.

1.Ellappan … 1st Respondent/Petitioner

2.V.Subramani … 2nd Respondent/1st Respondent

CMA.No.813 of 2015

Royal Sundaram Alliance General
Insurance Co. Ltd.
Rep. by its Manager,
Sundaram Tower, No.45 & 46, Whites Road,
Chennai-4. … Appellant/2nd Respondent

Vs.

1.Duraisamy … 1st Respondent/Petitioner

2.V.Subramani … 2nd Respondent/1st Respondent

CMA.No.835 of 2015

Royal Sundaram Alliance General
Insurance Co. Ltd.
Rep. by its Manager,
Sundaram Tower, No.45 & 46, Whites Road,
Chennai-04. … Appellant/2nd Respondent

Vs.

1.Duruvasan ... 1st Respondent/Petitioner

2.V.Subramani ... 2nd Respondent/1st Respondent

Common Prayer: Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.6.2014 passed in MCOP.Nos.335, 361 and 334 of 2009 on the file of Motor Accidents Claims Tribunal (Sub-ordinate Judge) Dharmapuri.

(In all the CMAs)
For Appellant :Mr.M.Krishnamoorthy

For Respondents :Mr.M.Selvam (for R1) in all CMAs
No Appearance (for R2 in CMA.813/15)

JUDGMENT

All the above CMAs arising out of MCOP.Nos.334, 335 and 361 of 2009 on the file of MACT, Dharmapuri. The claimants had all suffered injuries in a road accident, dated 23.4.2006.

2.The brief facts of the case:
The claimants are all passengers in the mini door van bearing No.TN-24-X-0032. On 23.4.2006 the claimants were travelled on the said Mini door van along with their goods of several baskets of tomatoes, on that day at about 9.00 am when the said van was being driven by its driver at Udayanandahalli Village the van turned turtle due to the rash and negligent driving of the driver of the van. In the said accident the claimant who were travelling with their goods were sustained injuries and they were taken to Hospital and were given treatment. The van was insured with the appellant Insurer. The petitioners have filed petition claiming compensation for the injuries suffered by them.

3.The appellant has filed his counter contending that the accident did not taken place due to the negligence of the driver and that the respondents are gratituous passengers in a goods vehicle which is a policy violation and thus they are not liable to pay compensation.

4.The trial court found that the appellant is liable to pay compensation. Hence the present Appeal.

5.I heard Mr.M.Krishnamoorthy, learned counsel for the appellant and Mr.M.Selvam, learned counsel for the 1st respondent in all the CMAs and perused the entire materials available on record. No representation on behalf of the 2nd respondent in CMA.No.813 of 2015.

6.The accident occurred on 23.04.2006 when the van carrying the petitioners and their goods capsized. It is clear that the accident occurred only due to the rash and negligent driving of the driver otherwise the van ought not have capsized. Now the question of liability comes up. The FIR in Crime No.179 of 2006 is filed against the van driver. It does not state that the driver does not possess a valid licence. Now the burden of proving that the driver was not having a valid driving licence vest with the Insurance company/Appellant. The appellant has not let in evidence in this regard. The driving licence of the driver of the van has been marked as Ex.R4 and R2 Assistant at RTO has stated in his cross examination that the driver holding the said licence is authorized to drive vehicle classified as LMV at 7500 Kgs. Now the driver was driving a vehicle which is classified as goods vehicles. Does the driver hold necessary qualification to drive a goods vehicle? The trial court has not dealt whether the driver is licenced to drive a goods vehicle and the appellant counsel also is not in a position to elaborate on it. However if the licence had necessary endorsements the court would have mentioned the same. Therefore we presume that the driver of the vehicle even though had a valid driving licence did not have a licence to drive a goods vehicle. It naturally follows that there is a policy condition violation.

7.Just because there is a violation of the policy condition a sufferer cannot be denied compensation. The owner of the vehicle is very much liable to pay compensation to the claimants. Further the driver is certified to drive a LMV then he was certified to drive a LMV the class of vehicle involved in the accident. The same is confirmed by the R2 who has deposed that the driver with LMV Licence can drive vehicle at about 7,500 Kgs. Thus the liability of both the parties cannot be ruled out. This question was decided in 2004(1) TNMAC 104 CSC National Insurance Co. Ltd. Vs. Swaran Singh and others

> “The Insurer had to indemnify the compensation amount payable to the Third Party and the Insurance company may recover the same from the insured. Doctrine of “Pay and Recover” was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the Insurance Company in cases of breach of Policy condition due to disqualifications of the Driver or invalid Driving Licence of the Driver and held that in case of Third Party risks, the Insurer has to indemnify the compensation amount to the Third Party and the Insurance

company may recover the same from the insured. Elaborately considering the Insurer's contractual liability as well as statutory liability vis-à-vis the claims of Third parties, the Supreme Court issued detailed guidelines as to how and in what circumstances, "pay and recover" can be ordered"

"As per the decision in Swaran Singh case, onus is always upon the Insurance company to prove that the Driver had no valid Driving Licence and that there was breach of Policy conditions. Where the Driver did not possess the valid Driving Licence and there are breach of Policy conditions, "Pay and recover" can be ordered in case of Third Party risks. The Tribunal is required to consider as to whether the Owner has taken reasonable care to find out as to whether the Driving Licence produced by the Driver, does not fulfill the requirements of law or not will have to be determined in each case"

Thus the claimants are entitled to award of compensation.

8.Now coming to the question of quantum of compensation, in MCOP.No.361 of 2009 the claimant suffered compound fracture of the right upper arm and multiple injuries all over the body. Disability certificate Ex.P8 is marked showing a disability of 50%. The claimant was carrying his agricultural product at the time of accident. Therefore it is presumed that the claimant was an agriculturist. Eventhough no certificate of income was produced and the tribunal fixed the monthly income at Rs.5000/-. An agriculturist could earn that much. The claimant being aged 43 years at the time of accident the tribunal applied the multiplier of 14 and arrived at a loss of income due to permanent disability at Rs.4,20,000/-, the tribunal awarded a sum of Rs.15,000/- for pain and suffering, Rs.10,000/- for loss of income, Rs.10,000/- for medical expenses, Rs.10,000/- for transportation and Rs.10000/- for extra nourishment arriving at a total compensation of Rs.4,75,000 which is not on the higher side.

9.In MCOP.No.334 of 2009 the claimant suffered crush injury to his left big toe 2, abrasion on the left knee 3 + 3 cm and twisted knee, 3, partial amputation of toes of the left leg and multiple injuries all over the body. Disability certificate Ex.P10 showing a disability of 20% has been marked. The claimant was an agriculturist admittedly since he was carrying his agricultural product at the time of accident. Even though no income certificate is marked the tribunal filed his income at Rs.5000/-. The claimant was aged 53 years at the time of the accident and therefore applied 11 multiplier and arrived at Rs.1,32,000/- as loss of income due to permanent disability, the tribunal further awarded Rs.15,000/- for pain and suffering, Rs.10,000/- for loss of income, Rs.10,000/- for medical expenses, Rs.10,000/- for transportation charges, Rs.10,000/- for extra nourishment, totaling a sum of Rs.1,87,000/- which is a reasonable award.

10.In MCOP.No.335 of 2009 the claimant suffered grievous injuries 1.contusion of left thigh middle depression of femur 2.contusion of left knee, 3.loss of distal phalanges II, III, IV and V of left hand fingers, 4.right hand III IV finger tips at loss of phalanges and injury all over the body. Disability certificate Ex.P12 showing a disability of 12% was marked. The petitioner was admittedly an agriculturist and the tribunal fixed Rs.5000/- as his income. An agriculturist could easily earn a sum of Rs.5000/- per month. The claimant being 50 years old, the tribunal applied 13 multiplier and awarded a sum of Rs.3,90,000/- for loss of income due to permanent disability. The tribunal further awarded a sum of Rs.15,000/- for pain and suffering, Rs.10,000/- for loss of income, Rs.10,000/- for medical expenses, Rs.10,000/- for transport charges and Rs.10,000/- for extra nourishment, the tribunal awarded a total of Rs.4,45,000/- which is reasonable.

11.In the result, all the appeals are partly allowed and the award of the Tribunal in respect of the quantum is confirmed. However the appellant/Insurance company is directed to pay the compensations to the claimant with interest at the rate of 7.5% p.a. from the date of petition. The appellant/Insurance company is further directed to recover the amount so paid to the claimant from the owner of the vehicle. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

vs

To

1. The Motor Accidents Claims Tribunal
(Sub-ordinate Judge) Dharmapuri.

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

+1cc to Mr.M.Selvam, Advocate SR.No.9589

+3cc to Mr.M.Krishnamoorthy, Advocate SR.No.9830,9831,9832

C.M.A.Nos.812, 813 and 835 of 2015
and
M.P.Nos.1, 1 and 1 of 2015

GMY(23/05/2019)