IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1067 of 2007

(Through Video Conferencing)

1.Vijayalakshmi (Died)
2.M.Pandurangan
3.Bhaskaran
4.Ezhilmaran
5.Ramani
(3rd to 5th appellants were impleaded vide order dated 27.08.2019 made in C.M.P.No.18219 of 2019 in CMA.No.1067/07)

... Appellants/Claimants

Vs.

1.M/s.Goodworth Securities,
No.1087/31, Sector Housing Board,
Gurgaon, Haryana State.

2.The Oriental Insurance Company Limited,
Divisional Office, Gurgaon,
Oriental House, A25-27 Azad Ali Road,
New Delhi. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order and decretal order as made in M.C.O.P.No.57 of 2001 dated 22.09.2006 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Vellore, Vellore District, awarding a sum of Rs.8,20,500 to the appellants as compensation as against the claim of Rs.10,00,000/- made by the appellants.

For Appellants : Mr.R.Karthikeyan
For R1 : No appearance
For R2 : Mr.D.Bhaskaran

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J U D G M E N T

With consent of both the counsels, this Civil Miscellaneous Appeal is taken up for hearing. Heard the learned counsels for the appellants and the 2nd respondent.

2. This Civil Miscellaneous Appeal has been filed against the impugned Order and Decree dated 22.09.2006 passed by the Motor Accident Claims Tribunal (Sub Court) Vellore, Vellore in M.C.O.P.No.57 of 2001.

3. By the impugned Order and Decree, the Tribunal has awarded a sum of Rs.8,20,500/- together with interest at 9% per annum from the date of filing of the claim petition, to the 1st and 2nd appellants. Aggrieved by the impugned and order, the 1st and 2nd appellants had originally filed this Civil Miscellaneous Appeal. Since the 1st appellant has died on 03.12.2016, the legal heirs of the 1st appellant were impleaded as 3rd to 5th appellants by an order dated 27.08.2019 of this Court.

4. The claim petition was filed by the 1st and 2nd appellants, who are the parents of the deceased Thiruselvan. The deceased Thiruselvan died in an accident while travelling towards Pallikonda from Vellore in an Ambasador Car bearing registration No. TN 23 C 6426, which was hit by a lorry.

5. While awarding compensation to the 1st and 2nd appellants, the Tribunal has ordered the compensation to be paid by the 1st respondent owner of the vehicle while absolving the 2nd respondent Insurance Company of its liability on the ground that 1st and 2nd appellants/claimants had not produced the copy of the driving licence of the driver of the lorry before the Tribunal to fasten the liability on the 2nd respondent Insurance Company.

6. This view of the Tribunal is not correct and the issue is no longer res integra and is covered by the plethora of decisions of the Hon'ble Supreme Court in National Insurance Company Vs. Swaran Singh and Others, (2004) 3 SCC 297 and National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, (2007) 3 SCC 700 and few other decisions.

7. The Hon'ble Supreme Court in National Insurance Company Vs. Swaran Singh and Others, (2004) 3 SCC 297, summarised the position as follows:

> (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
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> (ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter

alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

8. The Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, (2004) 13 SCC 224, has held that the Insurance Company can be directed to pay and recover the same from the owner of the vehicle where there is only a violation of terms of the policy's conditions. In paragraph Nos.7 and 8, it was observed as follows:-

> 7. .... We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.
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> 8.........Before release of the amount to the claimants, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured.

9. In the light of the above, the 2nd respondent Insurance Company is given liberty to recover the amount from the 1st respondent in terms of the two decisions of the Hon'ble Supreme Court. The 2nd respondent is directed to deposit the award amount and cost before the Tribunal by deducting already deposited if any, together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment.

10. On such deposit being made by the 2nd respondent, the 2nd appellant is directed to withdraw the 50% of the compensation and the interest together with 1/4th of the deceased 1st appellant's share. Since the 1st appellant died during the pendency of this appeal and the 3rd to 5th appellants are the legal heirs of the deceased 1st appellant, they are permitted to withdraw the balance of the compensation together with the interest of the same equally.

11. Accordingly, this Civil Miscellaneous Appeal is allowed with the above directions. No cost.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

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To:
The Judge,
Motor Accident Claims Tribunal
(Sub Court) Vellore,
Vellore.

Copy to:
The Section Officer, VR Section, High Court,Madras.

C.M.A.No.1067 of 2007

A.SK(04.01.2021)