IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1732 of 2010
and M.P.No.1 of 2010

(Through Video Conferencing)

United India Insurance Co., Ltd.,
Rep.by its Branch Manager,
Pondicherry. ... Appellant/3rd Respondent

vs.

1.G.Monish Issac Paul Gunalan ... 1st Respondent/Petitioner

2.J.Kathiravan
(set exparte before the Tribunal)

3.A.Arokiadoss … Respondents 2 & 3/1st & 2nd Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.A.C.T.O.P.No.127 of 2004 dated 27.06.2006 on the file of the Motor Accidents Claims Tribunal, Karaikal.

For Appellant : Mr.M.J.Vijayaraghavan

For R1 : No Appearance

J U D G M E N T

The Insurance company is the appellant and is aggrieved by the impugned Judgment and decree dated 27.06.2006 passed by the Motor Accidents Claims Tribunal, Karaikal in M.C.O.P.No.127 of 2004. For brevity hereinafter referred to as the Tribunal and the impugned order respectively.

2. By the impugned order, the Tribunal has awarded a sum of Rs.2,82,697/- as compensation together with interest at 7.5% from the date of the claim petition till the date of deposit, to the 1st respondent-claimant who was aged about 20 years at the time of accident.

3. The appellant-Insurance Company is the insurer of the motorcycle belonging to the 3rd respondent herein and that the insured with the motorcycle was driven by the 2nd respndent. It is the case of 1st 1st respondent/claimant that on 04.03.2004 there was a head on collision between two

motorcycles when the 1st respondent was riding in a motorcycle bearing Reg.No.PY-01/P-7557, Hero Honda CBZ on the eastern side corner of the road, when the 2nd respondent drove a motorcycle, Hero Honda Dawn bearing Reg.No.PY02/C-2027 from the opposite direction, from north to south direction in a rash and negligent manner and dashed against the motorcycle of the 1st respondent/claimant as a result of which, the 1st respondent/claimant fell down on the road and sustained injuries in his head, right leg finger and right hand.

4. The learned counsel for the appellant-insurance company submits that the Tribunal ought to have fixed 50% contributory negligence on the 1st respondent/claimant as there was a head on collision. It is submitted that the Tribunal erred in adopting multiplier to award the aforesaid compensation. The learned counsel further alternatively submitted that the Tribunal ought to have ordered to pay and recovery the amount from the 3rd respondent owner of the vehicle.

5. Though notice has been served on the first respndent, there is no representation on behalf of him. The 2nd respondent was called absent and set exparte before the Tribunal.

6. I have considered the arguments advanced by the learned counsel for the appellant and I have also perused the evidence available on record.

7. It is noticed that the accident was due to the rash and negligent riding of rider of the motorcyle i.e. third respondent. At the same time, since the the third respondent was not holding valid licence at the time of the accident, the Tribunal has fixed the liability on the 3rd respondent owner of the vehicle. If there is a violation of policy conditions, the appellant - Insurance Company can be made liable to pay the compensation and recover the amount from the owner of the insured vehicle as per the decision of the Hon'ble Supreme Court in National Insurance Company Vs. Swaran Singh and Others, (2004) 3 SCC 297. The relevant portion of the Judgment is as follows:

> (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.

8. Since the third respondent, owner of the insured motorycycle did not possess a valid driving licence at the time of the accident, there was indeed a violation of the policy conditions. Therefore, as per the decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, (2004) 13 SCC 224, liberty can be given to the appellant Insurance Company to pay the compensation awarded by the Tribunal and recover the same from the owner of the motorycycle, i.e. 3rd respondent herein.

9. It is represented by the learned counsel for the appellant-Insurance Company has already been deposited the amount of compensation awarded by the Tribunal together with interest and cost. The appellant-Insurance Company therefore may proceed to recover the same from the 3rd respondent owner of the motorycycle.

10. The 1st respondent/claimant is permitted to withdraw the compensation together with interest, less any amount already withdrawn, by filing suitable application before the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal is disposed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

kkd

To

1.The Motor Accidents Claims Tribunal,
Karaikal.

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

C.M.A.No.1732 of 2010
and M.P.No.1 of 2010

GP(CO)
GN(25/08/2021)