

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.195 OF 2010

AND

M.P.NO.1 OF 2010

(THROUGH VIDEO CONFERENCING)

United India Insurance Co. Ltd.,
104-A, Peramanur Main Road,
Salem.

... Appellant

Vs.

1.Usharani
2.Minor Iniyavar
3.Kannaiyan
4.Rajendran

... Respondents

Prayer:-

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 12.08.2009 made in MCOP.No.21/2007 on the file of the MACT (Sub-Court) at Sankari.

For Appellant : M/s.I.Malar

For R1 to R3 : Mr.Kulanthaivel

For R4 : Not ready in notice

J U D G M E N T

Heard the learned counsels for the appellant and the 1st to 3rd respondents.

2. This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 12.08.2009 passed in M.C.O.P.No.21 of 2007 by MACT (Sub-Court) at Sankari.

3. By the impugned judgment, the Tribunal has awarded a sum of Rs.6,26,000/- together with interest at 7.5% per annum from

the date of filing of the claim petition, to the 1st to 3rd respondents/claimants, who are the legal heirs of the deceased Ravikumar, under the following heads:-

Loss of earning	Rs. 5,76,000/-
Loss of Consortium	Rs. 20,000/-
Love and Affection	Rs. 20,000/-
Transport & Funeral	Rs. 10,000/-
Total	Rs. 6,26,000/-

4. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

5. The deceased Ravikumar died in an accident on 18.09.2006 at about 10.15 p.m, while traveling in a lorry bearing registration No. TCJ-7497, near Marakatti Petrol Bunk, Belgam Pagla Kottai Salai, Savathathi, T.K.Karnataka. Based on the claim petition filed by the 1st to 3rd respondents/claimants, the Tribunal has awarded the above compensation.

6. There is no dispute in the calculation of the compensation. The dispute in the present Civil Miscellaneous Appeal is on the liability as the Tribunal has ordered to "pay and recover". The appellant Insurance Company has filed the present appeal against the impugned judgment on the ground that the accident vehicle did not have a valid permit for plying in the State of Karnataka, where the accident took place in the year 2006.

7. I have considered the arguments advanced by the learned counsel for the appellant and the 1st to 3rd respondents.

8. This issue is no longer res integra. The issue is presently settled by the decision of the Hon'ble Supreme Court in National Insurance Company Vs. Swaran Singh and Others, (2004) 3 SCC 297 followed in National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, (2007) 3 SCC 700 and other cases which hold the filed. The award passed by the Tribunal directing the Insurance Company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by the Hon'ble Supreme Court in Swaran Singh (supra) and Laxmi Narain Dhut (supra) cases.

9. The Hon'ble Supreme Court in National Insurance Company Vs. Swaran Singh and Others, (2004) 3 SCC 297, summarised the findings 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.

(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.

10. I therefore find no merits in the present Civil Miscellaneous Appeal. This Appeal is therefore liable to be dismissed. The appellant is directed to deposit the balance amount of compensation and cost, if any before the Tribunal, together with interest at 7.5% per annum from the date of filing of the claim petition, within a period of six weeks from the date of receipt of a copy of this judgment. The 1st to 3rd respondents are permitted to withdraw the compensation amount by filing suitable application before the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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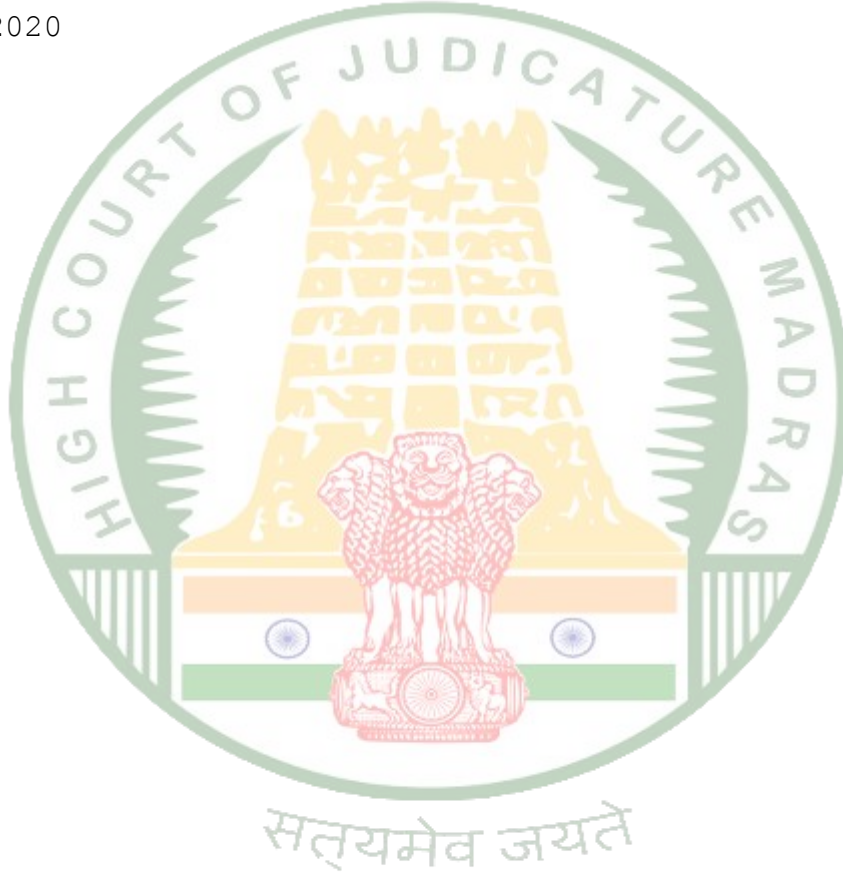
The Motor Accident Claims Tribunal (Sub-Court),
Sankari.

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VR Section, High Court,
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and M.P.No.1 of 2010

SSV (CO)
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