IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3182 of 2011
and
M.P.No.1 of 2011

(Through Video Conferencing)

National Insurance Company Limited,
2nd Floor, No.81-D,
Chetty Street, Bus Stand opposite,
Tiruchengode. ... Appellant/3rd Respondent

Vs.

1.Rajkumar ...Respondent I/Petitioner

2.M.Sekar ...Respondent II/Ist Respondent

3.I.Ganesan ...Respondent-III/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.A.C.T.O.P.No.56 of 2009, dated 21.12.2009, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Erode.

For Appellant : M/s.N.B.Surekha

For respondents: No appearance

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned Judgment and Decree dated 21.12.2009 passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Erode in M.C.O.P.No.56 of 2009.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.78,480/- as compensation together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit and fixed the liability on the appellant to pay the compensation to the 1st respondent/claimant.

Challenging the liability, the Insurance Company has filed this Civil Miscellaneous Appeal.

3. It is contention of the learned counsel for the appellant that the driver of the accident vehicle which was insured with the appellant Insurance Company did not possess the valid licence and therefore, this Court can modify the impugned Judgment and Decree in terms of the decision of the Hon'ble Supreme Court in National Insurance Company Vs. Swaran Singh and Others, (2004) 3 SCC 297. The Hon'ble Supreme Court 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.
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> (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 interse 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.

4. I have considered the arguments advanced by the learned counsel for the appellant Insurance Company. I have perused the evidence on record.

5. There are no disputes in the facts of the present case. The argument of the learned counsel for the appellant Insurance Company is that the 2^{nd} respondent was charged under Section 3 of the Motor Vehicles Act, 1988 and had accepted the guilty of his offence as per Ex.A8.

6. That being the case, the impugned Judgment and Decree is modified by allowing the appellant to pay the compensation to the 1^{st} respondent/claimant and recover the same from the 3^{rd} respondent owner of the lorry.

7. Therefore, the appellant Insurance Company is directed to deposit the amount of compensation awarded by the Tribunal, if it has not deposited, together with interest as directed by the Tribunal, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment. The liberty is given to the appellant Insurance Company to recover the same from the 3^{rd} respondent owner of the lorry thereafter.

8. On such deposit, the 1^{st} respondent/claimant is permitted to withdraw the amount of compensation together with interest, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

9. This Civil Miscellaneous Appeal is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:
The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Erode.

Copy to

The Section Officer
VR Section
High Court Madras-104

+1 cc to M/s.N.B.Surekha Advocate sr25066

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