IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3818 of 2011 and M.P.No.1 of 2011

(Through Video Conferencing)

National Insurance Co., Ltd.,
Branch Manager,
No.18, Court Street, Tirupur. .. Appellant/2nd Respondent

.vs.

1.Govindasamy ...1st Respondent/Petitioner
2.R.Shankar
( 2nd respondent remained exparte before the Tribunal) ..2nd Respondent/1st Respondent

Prayer.: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.04.2011 made in M.C.O.P.No.1259 of 2007 on the file of the Additional District Judge, (FTC-IV) , Tiruppur.

For Appellant : Mr. S.Arunkumar

For R1 : Mr.Lokesh for M/s.Ma.P.Thangavel

J U D G M E N T

The Insurance company is the appellant and is aggrieved by the impugned order and decretal order dated 29.04.2011 passed by the Motor Accidents Claims Tribunal presided over by the Additional District Judge, (FTC-IV) , Tiruppur.

2. By the impugned order dated 29.04.2011, the Tribunal has awarded a sum of Rs.4,33,300/- as compensation together with interest at 9.5% from the date of the claim petition till the date of deposit, to the 1st respondent-claimant .

3.On 23.07.2007 at about 17.30 hrs, while the 1st respondent was riding his motor cycle bearing Reg.No.TN.39-E-5018, when a motor cycle bearing Reg.No.TN-39-AM-9603 belonging to the 2th respondent, owner-cum driver insured with the appellant-

Insurance Company, driven in a rash and negligent manner and collided with the 1st respondent's motorcycle.

4. The 1st respondent sustained multiple injuries all over his body. Therefore, the 1st respondent filed the above claim petition claiming compensation against the 2nd respondent and the appellant. The 2nd respondent, owner of the motor cycle, remained exparte before the Tribunal.

5. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider-2nd respondent of the motor cycle. It therefore directed the appellant/Insurance Company, being insurer of the said motorcycle, to pay a sum of Rs.4,33,300/- as compensation to the 1st respondent and recover the same from the 2nd respondent/owner of the two wheeler as he did not possess valid driving licence to drive the motorcycle.

6. Aggrieved by the said order, the appellant/Insurance Company has filed the present appeal.

7. The learned counsel appearing for the appellant/Insurance Company contended that the 2nd respondent-rider of the insured motorcycle did not possess a valid driving license to ride the insured two wheeler, at the time of accident. RW2- who was an employee of RTO, who also deposed that the 2nd respondent -rider of the motorcycle bearing Reg.No.TN-39-AM-9603 did not possess a valid driving licence to ride it and obtained a driving licence only on 03.12.2009. It is therefore submitted that since at that time of accident i.e. 23.07.2007 there was no valid licence with the 2nd respondent, the liability should be only on the 2nd respondent viz., R.Shankar.

8. The learned counsel further submitted that he relied on the judgment of the Hon'ble Supreme Court reported in 2004 ACJ 1 SC [National Insurance Co. Ltd., Vs. Swaran Singh and others], where, the Hon'ble Apex Court has held that even if the driver of the vehicle did not possess a valid driving licence at the time of accident, the Insurance Company can be directed to pay the amount to the claimant and then realise the amount from the owner of the offending vehicle is being used to fasten liability on the appellant. It is therefore submitted that under Section 3 of the Motor Vehicles Act, 1988, a statutory responsibility cast on the person driving a motor vehicle to possess a valid driving licence while driving the motor vehicle.

9. It is further submitted that the owner of the motor vehicle is responsible for contravention of Sections 3 & 4 under the Act. The learned counsel for the appellant-Insurance Company further submitted that despite stringent law, violation

of law and policy condition is being observed with impunity and therefore, the appellant-Insurance Company should not be held liable to pay the compensation in the light of the subsequent decision of the Hon'ble Supreme Court.

10. It is further submitted that almost 13 years have lapsed since the decision of Swaran Singh's case referred to supra, was rendered. However, the Enforcing Authorities are not taking steps to curb violations of Sections 3 & 4 of the Motor Vehicles Act and in case of accidents, the Insurance Company are being forced to bear the liability. He submits that recovery is an illusory remedy. In any event, the compensation claimed by the 1st respondent is excessive. He therefore prayed for setting aside the compensation awarded by the Tribunal.

11. The learned counsel appearing for the 1st respondent submitted that in the present case, the 2nd respondent rider drove the vehicle in a rash and negligent manner and hit against the motorcycle. Therefore, prayed for dismissal of this appeal.

12. I have considered the arguments advanced by the learned counsel appearing for the appellant-Insurance Company and the learned counsel for the 1st respondent-claimant. I have also perused all the materials available on record.

13. Though the submissions made by the learned counsel for the appellant appears to be reasonable, the Hon'ble Supreme Court has held that in the case of violation of the policy conditions which includes the violation of the breach of the statutory provisions, the appellant-Insurance Company can pay and recover the amount from the owner of the insured vehicle.

14. In the impugned order, the Tribunal has also given a such liberty to the Insurance Company to pay and recover the amount from the 2nd respondent. Therefore, this Court is bound by it. The Hon'ble Supreme Court in Jai Prakash Vs. National Insurance Company Limited and Others, (2010 ) 2 SCC 607, has given few suggestions to ameliorate the plight of accident victims and their dependents. However, till date, no steps have been taken to implement the suggestion despite a lapse of ten years. The law is outdated and is required to be amended considering the dynamics involved. Owners of vehicles can be asked to pay more premium to cover for the consequence arising out of a motor vehicle accidents on the injured and the family members of the accident victims on par with the third parties considering the fact that death or injury are on account of use of the vehicle.

15.In the result, this civil miscellaneous appeal is dismissed. The appellant/Insurance Company is therefore directed to deposit a sum of Rs.4,33,300/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment and recover the same from the 2nd respondent, owner of the vehicle. On such deposit, the 1st respondent is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kkd/jen

To

1.The Motor Accidents Claims Tribunal,
the Additional District Judge,
(FTC-IV) , Tirupur.

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

C.M.A.No.3818 of 2011

MR(CO)
RMP(21/04/2021)