IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2657 of 2013
and
M.P.No.1 of 2013

V.K.Nalliappan .. Appellant/1st Respondent

Vs.

1.Amirdham

2.Minor.Vijaya

3.Minor.Ilamathi

(Minor respondents 2 and 3 are represented by their mother and natural guardian, the 1st respondent herein)

.... Respondents/Claimants

4.Ravi

5.Arunkumar

6.New India Assurance Company Limited,
No.17, Fort Main Road,
Sevvapettai,
Salem - 2. .. Respondents/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.10.2011 made in M.C.O.P.No.322 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Rasipuram.

For Appellant	:	Mr.S.R.Varun Karthik for Mr.C.Jagadish
For RR 1 to 3	:	Ms.T.Gayathiri for Mr.C.Kulanthaivel
For R4	:	No appearance
For R6	:	Ms.A.Salomi for Mr.C.RameshBabu

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 20.10.2011 made in M.C.O.P.No.322 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Rasipuram.

3.The appellant is the 1st respondent in M.C.O.P.No.322 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Rasipuram. The respondents 1 to 5 filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of one Kumar, who died in the accident that took place on 01.04.2006.

4.According to respondents 1 to 5, on 01.04.2006 at about 06.30 P.M., while the deceased was riding his TVS champ motorcycle bearing Registration No.TN 27 B 7198 on Rasipuram - Attur main road from Mettla to Ayilpatty near Selliyampalayam valaivu, the driver of the car belonging to the appellant who was driving the vehilce from the opposite direction in a rash and negligent manner at a high speed, without following the road traffic rules, came and dashed against the TVS champ which was rode by the deceased and caused the accident. In the accident, the said Kumar fell down and sustained grievous injuries in his head, nose, right shoulder and all over his body and immediately he was taken to Rasipuram Government Hospital. Thereafter he was admitted in the Government Hospital, Salem. Inspite of treatment, the said Kumar succumbed to injuries on 05.04.2006 in the Government Hospital, Salem. Therefore, the respondents 1 to 5 filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation against the appellant and 6th respondent-Insurance Company, being the owner and insurer of the car respectively.

5.The appellant being the owner of the car remained exparte before the Tribunal.

6.The 6th respondent-Insurance Company, being the insurer of the car filed counter statement and denied all the averments made by the respondents 1 to 5. According to the 6th respondent-Insurance Company, the accident has not occurred as alleged by the respondents 1 to 5. The accident has occurred only due to rash and negligent riding by the deceased. The deceased only rode his motorcycle in a rash and negligent manner and dashed against the car belonging to the appellant and invited the accident. The respondents 1 to 5 have to implead the owner and insurer of the motorcycle rode by the deceased. The driver of the car belonging to the appellant did not possess valid driving license at the time of accident. The driving license of the driver of the car belonging to the appellant expired on 20.01.2006 and he renewed the same only on 04.04.2006. Therefore, on the date of accident, i.e., on 01.04.2006, the driver of the car belonging to the appellant did not possess valid driving license. Further, the Judicial Magistrate Court, Rasipuram pronounced the judgment against the driver of the car belonging to the appellant for not having driving license at the time of accident. Hence, the 6th respondent-Insurance Company is not liable to pay compensation to the respondents 1 to 5. The respondents 1 to 5 have to prove that the deceased was posessing valid driving license at the time of accident. The respondents 1 to 5 have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the respondents 1 to 5 are highly excessive and prayed for dismissal of the claim petition.

7.The 6th respondent-Insurance Company, being the insurer of the car belonging to the appellant filed additional counter statement and further submitted that the driver of the car belonging to the appellant drove the same slowly and diligently. The deceased only rode his TVS Champ motorcycle in the opposite direction in the middle of the road without following road traffic rules and regulations. The accident occurred only due to negligence on the part of the deceased. Therefore, the deceased also contributed to the accident and hence, the respondents 1 to 5 are not entitled to any compensation. Hence, the 6th respondent-Insurance Company is not liable to pay any compensation to the respondents 1 to 5 and prayed for dismissal of the claim petition as against the 6th respondent-Insurance Company.

8.Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Murugesan, who is the eyewitness to the accident was examined as P.W.2 and 8 documents were marked as Exs.P1 to P8. The 6th respondent-Insurance Company did not let in any oral and documemtary evidence.

9.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the appellant and directed the 6th respondent-Insurance Company, being the insurer of the car belonging to the appellant to pay a sum of Rs.6,27,064/- as compensation to the respondents 1 to 3 at the first instance and then recover the same from the appellant-owner of the car on the ground that the driver of the car belonging to the appellant did not possess valid driving license at the time of accident.

10.Against the said award dated 20.10.2011 made in M.C.O.P.No.322 of 2009 ordering pay and recovery, the appellant-owner of the car has come out with the present appeal.

11.The learned counsel appearing for the appellant contended that the Tribunal erred in holding that the driver of the car belonging to the appellant did not possess valid driving license at the time of accident. The Tribunal erred in adopting the finding of the Criminal Court to hold that the driver of the appellant did not possess valid driving license at the time of accident. The Tribunal failed to see that 6th respondent-Insurance Company did not let in any evidence or did not summon the official from concerned R.T.O. to prove that driver of the appellant did not possess valid driving license at the time of accident. The appellant due to his illness has taken treatment in Sankara Nethralaya, Chennai, C.M.C. Hospital, Vellore and Apollo Hospitals, Chennai and hence he could not be find fault for his driver for not renewing his driving license in time.

11(a).In support of his contention, the learned counsel appearing for the appellant relied on the judgment of the Hon'ble Apex Court dated 05.01.2004 made in S.L.P.(Civil). No.9027 of 2003, [National Insurance Company Limited Vs. Swaran Singh & Others], wherein it has been held as follows :-

> "... The insurer has also to satisfy the Tribunal or the Court that such violation or infringement on the part of the insured was wilful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96...".
>
> (iii)The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have 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 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 duly licensed driver or one who was not disqualified to drive at the relevant time.

(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 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 insured under section 149 (2) of the Act."

12.Per contra, the learned counsel appearing for the respondents 1 to 3 and the learned counsel appearing for the 6th respondent-Insurance Company separately made their submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

13.Though notice has been served on the 4th respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

14.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 3 and the learned counsel appearing for the 6th respondent and perused the entire materials on record.

15.The only question to be decided in this appeal is whether the Tribunal was right in ordering pay and recovery.

16.From the award passed by the Tribunal it is seen that the accident has occurred only due to rash and negligent driving by the driver of the car belonging to the appellant. The charge sheet was laid down against the driver including for an offense for not possessing valid driving license. The driver of the car has admitted his guilt including not possessing driving license and paid fine. The proceedings in Criminal Court or judgments rendered by the Criminal Court are not sole criteria for fixing negligence or fastening liability on the part of the Insurance Company. At the same time, the same can be taken into consideration along with other materials placed to arrive at a proper conclusion. It is not the case of the appellant that his driver was possessing driving license at the time of accident. It is admitted that driving license of the driver of the appellant expired on 20.01.2006 and he renewed the same only on 04.04.2006, i.e. after four months of expiry and three days subsequent to the accident.

17.The Hon'ble Apex Court in the judgment dated 23.09.2020 made in Civil Appeal Nos.7220 & 7221 of 2011, [Beli Ram Vs. Rajinder Kumar], held that when the driving license was not renewed within 30 days from the date of expiry and was renewed after the accident, that amounts to driver of the vehicle not possessing driving license. The Hon'ble Apex Court further held that in such circumstances, the Insurance Company is not liable to pay compensation. Before 23.09.2020 in number of cases it was held that if driver of the vehicle did not possess driving license, the Insurance Company must be directed to pay the compensation at the first instance and recover the same from the owner of the vehicle. In view of the judgment of the Hon'ble Apex Court dated 23.09.2020 made in Civil Appeal Nos.7220 & 7221 of 2011 and earlier judgments ordering pay and recovery, the judgment relied on by the learned counsel appearing for the appellant is not applicable to the facts of the present case as the facts of the present case are entirely different. In view of the admitted fact, the Tribunal has rightly ordered pay and recovery. There is no error in the said finding of the Tribunal warranting interference by this Court.

18.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.6,27,064/- awarded by the Tribunal as compensation to the respondents 1 to 3, along with interest and costs is confirmed. The 6th respondent-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.322 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Rasipuram, at the first instance and recover the same from the appellant-owner of the car. On such deposit, the 1st respondent is permitted to withdraw her share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondents 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 and 3 attain majority. On such deposit, the 1st respondent, being the mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 and 3. The appeal is dismissed as against respondents 4 and 5. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Rasipuram.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No. 34132
+1cc to Mr.C.Rameshbabu, Advocate, S.R.No.34059
+1cc to Mr.C.Jagadish, Advocate, S.R.No. 34308

C.M.A.No.2657 of 2013

LN(CO)
GN(16/06/2021)