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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.651 of 2013
and M.P. No.1 of 2013

National Insurance Co. Ltd.,
II Floor, 81-D, Chetty Street,
Opposite to Bus Stand,
Thiruchengodu 637 211,
Namakkal District.

.. Appellant/3rd Respondent

Vs.

1.P.M. Moideen @ Mohammed

2.Karguzhali

3.V. Naga Kugan .. Respondents/Petitioner/Respondents 1 and 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.11.2010, made in M.C.O.P. No.1009 of 2008, on the file of the Additional District Judge, Fast Tract Court No.1, (Motor Accident Claims Tribunal), Erode.

For Appellant : Mr.S.Vadivel

For Respondents: No appearance

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company challenging the liability fixed on them by the judgment and decree dated 19.11.2010, made in M.C.O.P. No.1009 of 2008, on the file of the Additional District Judge, Fast Tract Court No.1, (Motor Accident Claims Tribunal), Erode.

2. The appellant is the 3rd respondent in M.C.O.P. No.1009 of 2008, on the file of the Additional District Judge, Fast Tract Court No.1, (Motor Accident Claims Tribunal), Erode. The 1st respondent/claimant filed the said claim petition, claiming a



sum of Rs.1,50,000/- as compensation for the injuries sustained by him in the accident that took place on 21.09.2008.

3. According to the 1st respondent, on the date of accident, when the 1st respondent was walking on the Kundrathoor road, while passing by Ramakrishna Fancy Store, the 2nd respondent rider of the TVS Scooty bearing Registration No. TN-33-Q-6303 belonging to the 3rd respondent rode the vehicle in a rash and negligent manner and dashed against the 1st respondent and caused the accident. The accident occurred due to rash and negligent riding by the 2nd respondent, rider of the TVS Scooty. In the accident, the 1st respondent suffered multiple injuries and fracture. For the injuries suffered by him, the 1st respondent claimed compensation against the respondents 2 and 3 and appellant, as driver, owner and insurer of the offending vehicle.

4. The respondents 2 and 3 remained exparte before the Tribunal.

5. The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the 2nd respondent, rider of the TVS Scooty did not ride the vehicle rash and negligently. At the time of accident, the 2nd respondent did not possess valid driving license. For violation of policy conditions, the appellant is not liable to indemnify the 3rd respondent, owner of the vehicle. In any event, the 1st respondent has to prove his age, avocation and income, injuries suffered, disability sustained and treatment taken to claim compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1, examined one Doctor as P.W.2 and marked 12 documents as Exs.P1 to P12. The appellant examined two witnesses as R.W.1 and R.W.2 and marked 4 documents as Exs.R1 to R4.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 2nd respondent, rider of the TVS Scooty belonging to the 3rd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.84,100/- as compensation to the 1st respondent at the first instance and recover the same from the 3rd respondent, owner of the vehicle.

8. Challenging the liability fixed on them by the award dated 19.10.2010, made in M.C.O.P. No.1009 of 2008, the appellant - Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance



Company submitted that the 2nd respondent, rider of the TVS Scooty rode the vehicle without any license. The Tribunal failed to see that the appellant has laid charge sheet against the 2nd respondent under Section 3 of the Motor Vehicles Act for not possessing Driving License. The 2nd respondent also has admitted her guilt and paid fine before the Criminal Court. The appellant sent registered notice to the respondents 2 and 3 to produce driving license. The respondents 2 and 3 failed to produce the driving license of 2nd respondent. The appellant discharged their burden of proving their defence by examining R.W.1 and R.W.2 and by marking Exs.R1 to R4 and prayed for allowing the appeal.

10. Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

11. Heard learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

12. It is the contention of the 1st respondent/claimant that while he was walking on the road, the 2nd respondent rode the TVS Scooty in a rash and negligent manner and dashed against him and caused the accident. The Tribunal considering the evidence let in, held that the accident has occurred only due to rash and negligent riding by the 2nd respondent. The appellant contended that the 3rd respondent has breached the conditions of policy by letting the 2nd respondent who did not possess driving license at the time of accident to ride the vehicle and therefore, appellant is not liable to pay any compensation to the 1st respondent. From the award of the Tribunal, it is seen that the 2nd respondent was charge sheeted for rash and negligent riding as well as for not possessing driving license. The 2nd respondent has admitted her guilt and paid fine. In addition to that, the appellant called upon the respondents 2 and 3 to produce driving license of 2nd respondent, but they failed to produce the driving license. The appellant also examined R.W.1, an Official from RTO who deposed that for 5 years prior to 2010, no license was issued to the 2nd respondent. The Tribunal, considering the charge sheet, admission of 2nd respondent and evidence of R.W.1 and documents filed by the appellant, held that the 2nd respondent did not possess driving license at the time of accident and for breach of policy conditions, ordered pay and recovery. A three Judges Bench of the Hon'ble Apex Court in a judgment reported in 2020 SCC Online SC 769 [Beli Ram Vs. Rajinder Kumar and another], has held that when a tort-feasor failed to renew the driving license within 30 days of expiry of driving license, as per the provisions of the Motor Vehicles Act, the Insurance Company is not liable to pay compensation, as owner of the vehicle has committed breach of terms of policy by entrusting the vehicle to a person not possessing a valid



driving license. The Hon'ble Apex Court considered the following judgments while arriving at the above decision:

- (i) (2004) 3 SCC 297 [National Insurance Co. Ltd. v. Swaran Singh and Ors.],
- (ii) (2020) 4 SCC 49 [Nirmala Kothari v. United India Insurance Company Limited],
- (iii) (2015) 2 TAC 52 [Tata AIG General Insurance Co. Ltd. v. Akansha & Ors.],
- (iv) (2015) 111 ALR 275 [The Oriental Insurance Co. Ltd. v. Manoj Kumar & Ors.] and
- (v) 2012 ACJ 1891 [National Insurance Co. Ltd. v. Hem Raj & Ors].

The Hon'ble Apex Court in the judgment reported in 2020 SCC Online SC 769 (referred to above), in paragraph Nos. 20, 21 and 22, has held as follows:

"20. The last judgment is of the Himachal Pradesh High Court in National Insurance Co. Ltd. v. Hem Raj & Ors. This was, once again, a case of an originally valid licence, which had expired, there was no question of a fake licence. It was opined that the conclusions to be drawn from the observations of the judgment in the Swaran Singh case of this Court, were that the insurance company can defend an action on the ground that the driver was not duly licensed on the date of the accident, i.e., an expired licence having not been renewed within thirty (30) days of the expiry of the licence as provided in Sections 14 & 15 of the MV Act. In this context it was observed that the Swaran Singh case did not deal with the consequences if the licence is not renewed within the period of thirty (30) days. If the driving licence is not renewed within thirty (30) days, it was held, the driver neither had an effective driving licence nor can he said to be duly licenced. The conclusion, thus, was that the driver, who permits his licence to expire and does not get it renewed till after the accident, cannot claim that it should be deemed that the licence is renewed retrospectively.

21. The learned Judge debated the question of the consequences of the MV Act being a beneficial piece of legislation. Thus, if two interpretations were possible, it was opined that the one which is in favour of the claimants should be given, but violence should not be done to the clear and plain language of the statute. Thus, while protecting the rights of the claimants by asking the



has held that when the driving license is not renewed, it amounts to not possessing driving license. The owner of the vehicle did not take care to verify whether the driver renewed license or not, for which the Insurance Company cannot be held liable. In the present case, it is proved that the 2nd respondent did not possess driving license at the time of accident. The 3rd respondent, owner of the vehicle without verifying whether the 2nd respondent is possessing driving license or not, permitted the 2nd respondent to ride the vehicle. By this failure, the 3rd respondent has violated the provisions of Motor Vehicles Act and also breached the terms and conditions of policy. In view of the judgment of the Hon'ble Apex Court referred to above, the award of the Tribunal ordering pay and recovery is liable to be set aside and is hereby set aside. The appellant-Insurance Company is not liable to pay compensation to the 1st respondent, as driver of the offending vehicle did not possess valid driving license as held by the Hon'ble Apex Court. Hence, the 3rd respondent/owner of the vehicle is directed to pay the compensation to the 1st respondent/claimant.

14. In the result, this Civil Miscellaneous Appeal is allowed and the amount awarded by the Tribunal at Rs.84,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 3rd respondent, owner of the vehicle is directed to deposit the award amount along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.1009 of 2008. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw excess amount, if any, lying the credit of M.C.O.P. No.1009 of 2008, if the entire award amount has already been deposited. It is made clear that if the 1st respondent/claimant has already withdrawn the award amount, the appellant/Insurance Company is not entitled to recover the same from the 1st respondent/claimant. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

gsa



To

1.The Additional District Judge,
East Tract Court No.1,
(Motor Accident Claims Tribunal),
Erode.

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No.36443

C.M.A. No.651 of 2013

VBA (CO)
CB (25/08/2021)