In the High Court of Judicature at Madras

Dated : 12.7.2021

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The Honourable Mr.Justice ABDUL QUDDHOSE

Civil Miscellaneous Appeal Nos.2367 & 2383 of 2015
and MP.Nos.1 and 1 of 2015

United India Insurance Co. Ltd.,
Erode. ...Appellant in both CMAs/ 2nd Respondent

Vs

1.Govindan
2.Palaniammal
3.Duraisamy ... Respondents in CMA.No.2367 of 2015/ Petitioners 1 & 2 and 1st Respondent

1.Sathish (a) Sathishkumar
2.Duraisamy ...Respondents in CMA.No.2383 of 2015/ Petitioners and 1st Respondent

APPEALS under Section 173 of the Motor Vehicles Act, 1988 against the common fair order and decretal orders dated 13.2.2015 in MCOP.No.1933 and 1934 of 2010 on the file of the Motor Accidents Claims Tribunal (Special District Court), Salem.

For Appellant in both CMAs : Mr.S.Arunkumar

For Respondents 1 & 2 in CMA.No.2367 of 2015 & Respondent-1 in CMA.No. 2383 of 2015 : Mr.S.Kalyanaraman

Respondent-3 in CMA.No. 2367 of 2015 & Respondent-2 in CMA.No.2383 of 2015 : Not ready in notice

COMMON JUDGMENT

I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the contesting respondents.

2. These appeals have been filed by the appellant - Insurance Company challenging the common award dated 13.2.2015 passed by the Motor Accidents Claims Tribunal (Special District

Court), Salem [hereinafter called the Tribunal] respectively in MCOP.Nos.1933 and 1934 of 2010.

3. MCOP.No.1933 of 2010 has been filed by the claimants – the parents of the deceased - one Mr.G.Prabhu, who was the rider of the motor vehicle and who died as a result of the accident on 17.7.2010 caused by the vehicle owned by the third respondent in CMA.No.2367 of 2015 and second respondent in CMA.No.2383 of 2015 and insured with the appellant herein.

4. MCOP.No.1934 of 2010 has been filed by the injured himself, who was the pillion rider in the motor cycle involved in the very same accident.

5. The Tribunal, under the impugned common award, directed the appellant – Insurance Company to pay a sum of Rs.4,82,000/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization to the claimants – the parents of the deceased – the said late Mr.G.Prabhu (MCOP.No.1933 of 2010) as detailed hereunder :

Head	Amount in Rs.
Pecuniary loss by fixing the annual income at Rs.27,000/- and adopting 18 as multiplier less: 10% towards income tax	4,37,400/-
Loss of love and affection	20,000/-
Funeral expenses	25,000/-
Total	4,82,400/-

6. The Tribunal, under the same impugned common award, directed the appellant – Insurance Company to pay a sum of Rs.95,850/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization to the claimant/ injured (MCOP.No.1934 of 2010) as detailed hereunder :

Head	Amount in Rs.
Disability at 35% X Rs.2000/- per disability	70,000/-
Attendant charges for taking treatment as an inpatient	5,000/-
Nutrition	5,000/-

Head	Amount in Rs.
For taking scan in the Government hospital	350/-
For taking X ray	500/-
For pain and suffering	10,000/-
For future medical expenses	5,000/-
Total	95,850/-

7. The appellant challenged the impugned common award on the ground that they are not liable to pay compensation to the claimants in view of the fact that the rider of the motor cycle himself was a tort- feasor and that he was not possessing a valid driving licence at the time of accident and hence, the pillion rider namely the claimant in MCOP.No.1934 of 2010 is also not entitled to compensation from the appellant.

8. The learned counsel for the appellant has drawn the attention of this Court to the insurance policy marked as Ex.R1 before the Tribunal and would submit that the coverage has not been given for cases where the rider himself was a tort-feasor and that since he was not in possession of a valid driving licence at the time of accident, the rider is also not entitled to any compensation.

9. The learned counsel for the appellant has also drawn the attention of this Court to the following judgments :

> "i. The decision of the Hon'ble Supreme Court in the case of Ramkhiladi Vs. United India Insurance Co. Ltd. [reported in 2020 (1) TN MAC (1)];
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> ii. The decision of Hon'ble Division Bench of this Court in the case of Divisional Manager, M/s.United India Insurance Co. Ltd., Kurinjipadi Vs. R.Rekha and others [reported in CDJ 2017 MHC 6539];
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> iii. The decision of the learned Single Judge of this Court in the case of United India Insurance Co. Ltd., Chennai Vs. B. Sudha & others [CMA.No.660 of 2015 dated 05.3.2020]; and
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> iv. The decision of the same learned Single Judge of this Court in the case of M/s. National Insurance Co. Ltd., Puducherry Vs. Rani & Others [CMA.No. 1848 of 2017 dated 12.3.2020]."

10. Referring to the aforementioned decisions, the learned counsel appearing for the appellant - Insurance Company submits that since the rider himself was a tort-feasor, the appellant is not liable to pay compensation. He would also submit that in the insurance policy marked as Ex.R1, no coverage has been provided for the rider of the motor vehicle.

11. Per contra, the learned counsel for the contesting respondents/claimants would submit that the rider of the motor vehicle was not responsible for the cause of the accident, which resulted in his death and the injuries sustained by the pillion rider. He would submit that even though the Tribunal had given a finding that the rider of the motor cycle was responsible for the cause of the accident, applying the principles laid down under Order XLI Rule 22 of the Civil Procedure Code and in view of the facts and circumstances, which led to the accident, the contesting respondents/claimants are entitled to compensation. He would further submit that under Section 163A of the Motor Vehicles Act, there is no necessity to plead negligence and therefore, the contesting respondents/claimants are entitled to compensation. Further, the learned counsel for the contesting respondents/claimants has relied upon the decision of the Hon'ble Supreme Court in the case of Sivaji and another Vs. United India Insurance Company Ltd. [reported in 2018 (2) TNMAC 149],

12. I have carefully considered the rival submissions and perused the material records.

13. It is not in dispute that the rider of the motor vehicle was constrained to apply a sudden brake as a stray dog suddenly crossed the vehicle, as a result of which, the vehicle slipped and both the rider as well as the pillion rider fell down. The rider died on 24.7.2010. A first information report was also registered only against the rider of the motor vehicle, which has been marked an an exhibit before the Tribunal. The Tribunal, under the impugned award, has given due consideration to the oral and documentary evidence and has correctly given a finding that the rider of the motor cycle was responsible for the cause of the accident, however, holding the appellant - Insurance Company liable to pay compensation on the ground that the insurance policy marked as Ex.R1 gives coverage for the claim of this sort.

14. This Court has perused and examined the insurance policy namely Ex.R1, which is a package policy issued by the appellant. As seen from Ex.R1, there is no insurance coverage for the rider of the two wheeler. Here is a case where there is no collision between two vehicles nor there was rash and negligent driving by any other offending vehicle. The accident

happened only due to the fact that after applying the brake, both the rider and the pillion rider fell down from the motor cycle, which resulted in them sustaining injuries and thereafter the death of the rider. Ex.R1 does not give coverage for the rider of the motor vehicle, which has been insured with the appellant, for his own fault.

15. The decisions relied upon by the learned counsel for the appellant - Insurance Company including the decision of the Hon'ble Supreme Court in the case of Ramkhiladi are squarely applicable to the facts of this case also. In the case of Ramkhiladi also, a claim was made under Section 163A of the Motor Vehicles Act and the deceased therein himself was a tort-feasor. The Hon'ble Supreme Court held that the claimants therein were not entitled to compensation from the Insurance Company. This Court has also followed the said decision of the Hon'ble Supreme Court in the other authorities relied upon by the learned counsel for the appellant.

16. The contention raised by the learned counsel for the concerned claimants in respect of the death of the rider of the motor vehicle has to be necessarily rejected in view of the fact that the Tribunal has given a categorical finding that only due to the fault of the rider of the motor vehicle, the accident happened. The said finding has not been challenged by the claimants of the deceased rider before this Court. The evidence available on record namely the first information report, which had been marked as an exhibit before the Tribunal also would reveal that the deceased himself was a tort-feasor.

17. In the case on hand, even though the learned counsel for the claimants concerned would rely upon the provisions of Order XLI Rule 22 of the Civil Procedure Code for the purpose of his submission that even though the finding of the Tribunal as regards the negligence of the rider has not been challenged by the claimants concerned by filing a separate appeal, the same can be challenged in an appeal filed by the Insurance Company, the same cannot be accepted by this Court in view of the fact that the first information report marked as an exhibit before the Tribunal stares at the face of the claimants that it was only the rider, who was responsible for the cause of the accident. Further, there is no other contra evidence produced by the claimants concerned before this Court.

18. With regard to the claim made by the pillion rider, who sustained injuries in the very same accident, it is settled law that the appellant - Insurance Company will have to pay compensation as he is a third party to the accident. However, in view of the fact that the rider of the motor vehicle was not possessing a valid and effective driving licence at the time of

accident, pay and recovery principle will have to be applied as per the settled law. The Tribunal, in the impugned award, failed to take into consideration the settled law. Instead, it directed the appellant - Insurance Company to pay the compensation amount without granting them the right to pay and recover. Hence, this Court modifies the order passed by the Tribunal with regard to the compensation claimed by the pillion rider by granting pay and recovery rights to the appellant - Insurance Company. Since the appellant - Insurance Company has not challenged the quantum of compensation awarded by the Tribunal to the pillion rider under the impugned award, the same is confirmed by this Court.

19. With regard to the decision of the Hon'ble Supreme Court relied upon by the learned counsel for the contesting respondents/ claimants in the case of Sivaji, the same is not applicable to the facts and circumstances of this case. In that decision, the maintainability of the claim made by the tort-feasor was under consideration and not the liability of the Insurance Company. In the decision of the Hon'ble Supreme Court in the case of Ramkhiladi referred to supra, the liability of the Insurance Company has been discussed and therefore, it is applicable to the facts of this case and not the decision of the Hon'ble Supreme Court in the case of Sivaji.

20. For the foregoing reasons, CMA.No.2367 of 2015 filed by the appellant - Insurance Company is allowed and the fair and decretal order dated 13.2.2015 made in MCOP.No.1933 of 2010 on the file of the Motor Accidents Claims Tribunal (Special District Court), Salem is set aside. At the time of admission of this appeal, this Court directed the appellant - Insurance Company to deposit the entire award amount together with accrued interest and costs. In the light of the judgment now delivered in CMA.No.2367 of 2015, the amount lying to the credit of MCOP.No.1933 of 2010 on the file of the Motor Accidents Claims Tribunal (Special District Court), Salem together with accrued interest thereon shall be refunded to the appellant - Insurance Company forthwith through RTGS.

21. CMA.No.2383 of 2015 filed by the appellant - Insurance Company is partly allowed by granting pay and recovery rights to the appellant and by directing them to pay the determined compensation by the Tribunal in the award dated 13.2.2015 made in MCOP.No.1934 of 2010 and recover the same from the second respondent herein.

22. At the time of admission of CMA.No.2383 of 2015, this Court directed the appellant to deposit the entire award amount together with accrued interest thereon. In the light of the above judgment rendered in CMA.No.2383 of 2015, the Tribunal is directed to transfer the award amount lying to the credit of the

claim petition together with accrued interest directly to the bank account of the first respondent herein/claimant through RTGS within a period of two weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected MPs are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

The Motor Accidents Claims Tribunal
(Special District Court), Salem.

Copy To

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.32956

CMA.Nos.2367 & 2383/2015
and MP.Nos.1 and 1 of 2015

KV(CO)
GN(18/11/2021)