IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 01.04.2021	Date of Pronouncing Judgment 06.07.2021

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1706 of 2016
and
C.M.P.No.12904 of 2016

The Oriental Insurance Company Limited,
3rd Party Claim HUB,
Represented by its Branch Manager,
No.32/312, 13th Street, Phase-II,
Sathuvachari, Vellore.
..Appellant/2nd Respondent

Vs.

1.Perumal ...Respondent/Petitioner

2.Manoharan ..Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed in M.C.O.P.No.221 of 2012, dated 25.02.2016 on the file of Motor Accident Claims Tribunal (Subordinate Judge), Vaniyambadi, Vellore District.

For Appellant : Mr. J. Chandran

For Respondents : Mr. F. Terry Chella Raja, for R1
R2 – No Appearance

J U D G M E N T

The appeal is preferred by the Insurance Company challenging the award dated 25.02.2016 passed by the Motor Accidents Claims Tribunal, Subordinate Judge, Vaniyambadi in MCOP.No.221/2012 on the on the point of liability and quantum.

2. The case of the appellant-Insurance Company is that on the date of the accident, the driver of the vehicle does not possess any driving license.

3. The learned counsel for the appellant herein/Insurance Company, would rely upon the decision of the Hon'ble Supreme Court, reported in 2020 (2) TNMAC 445 [Beli Ram Vs. Rajinder Kumar & another], wherein, it is held that if, the driver does not possess valid driving license on the date of the accident, the Insurance Company is held not liable. Further, the matter arises under the Workman Compensation Act.

4. On the point of quantum, the learned counsel appearing for the appellant/Insurance Company would draw my attention that no X-ray, no scan report, no speech report was filed so as to substantiate 23% disability said to have been suffered by the claim petitioner and in the absence of any positive evidence as to loss of earning capacity application of the employer does not arise.

5. The learned counsel for the appellant/Insurance Company would further contend that the accident has taken place due to the sudden burst of tyre. As per the evidence of RW.1-Office Assistant from RTO Office, Vaniyambadi on the date of the accident, the driver of the offending vehicle does not possess valid driving licence and hence relied upon the decision reported in 2020 (2) TNMAC 445 SCC wherein, the Hon'ble Apex Court has held that if, the driver of the vehicle does not possess valid driving licence then the employer alone is liable and Insurance Company is not liable and also relied upon the decision rendered by this Court dated 18.11.2020 in CMA.No.3506 of 2014.

6. Per contra, Mr.F.Terry Chella raja, learned counsel for the claim petitioner would contend that the case relied on by the appellant relates to Workmen's Compensation Act and draw my attention to the observation made in para No.19 of the judgment in Beli Ram's case (cited supra) since the matter arises under Workmen's Compensation Act and not under the claim petition filed under Motor Vehicles Act. Furthermore, as relied upon, the decision of the learned brother Justice G.Jayachandran in C.M.A.No.1746/2015 dated 14.09.2020, wherein the Insurance Company was directed to pay and recover. Since there is a valid policy namely package policy and the claimant being the driver is covered under the policy. Accordingly, awarded the compensation.

7. After perusing the citation referred by both the learned counsel in respect of the above said Beli Ram's case, I find that the clarification and observation made by brother

Justice G.Jayachandran in C.M.A.No.1746/2015 (cited supra) is on facts that when there is a valid policy covering the accident involving the claim petitioner also, in that case it is a package policy. As held that the Insurance Company is liable to pay the compensation by way of pay and recover on following the Swaran Singh case reported in 2004 (1) TN MAC 104 (SC).

8. On the facts and circumstances of the case in hand, the first respondent-claimant is a cleaner who travelled in the lorry and there is a specific finding by the Tribunal that he is employed under the second respondent and he travelled in the lorry. As per Ex.P3 Policy condition, the policy is public carrier other than three wheeler package policy for seating capacity in the cab 1+1 including the driver.

9. In view of the specific finding given by the Tribunal that the claimant is a cleaner, employed under second respondent owner and coupled with the nature of the policy along with the clause in the policy covering 1+1 person seating in the cabin are covered under the policy and hence, I find that the Insurance Company may be directed to pay. Hence, the pay and recover order passed by the Tribunal is just and does not warrant any interference by this Court. Accordingly, the order passed by the trial Court in respect of the liability to the Insurance Company, the same is hereby confirmed.

10. When there is no driving licence for the driver on the date of the accident following the decision reported in 2004 (1) TNMAC 104 the Doctrine of pay and recovery has to be invoked and based upon the documentary evidence produced from RTO Office viz., Exs.R4 & R5, the trial Court has rightly held that the Insurance Company is directed to pay the amount at the first instance, which direction to recover the same from the owner of the vehicle. Hence the point on the liability on the part of the Insurance Company stands negatived against the appellant-Insurance Company.

11. After perusing the various amounts awarded, I find that the compensation awarded by the trial Court and the disability applied namely 23% permanent disability based upon the documentary evidence of the

medical evidence and the doctor evidence, I do not find any error in fixing the disability or award of the compensation.

12. Considering the fact that the injured is a cleaner working under the owner of the vehicle, the compensation has to

be fixed as per " Schedule IV of the Workmen's Compensation Act, 1923". As per the finding rendered by the Trial Court, the injured is aged about 25 years and hence, multiplying factor is fixed at 216.91 and percentage of disability is fixed at 23% since it is an injury case, 60% of monthly wages has to be taken. Taking into consideration the nature of the employment at the relevant point of time, this Court is of the considered view that the salary of the person may be fixed at Rs.6,000/-.

60% x Rs.6,000/- = Rs.3,600/-
and hence, loss of income is arrived at
216.91 x 23/100 x 3,600 = Rs.1,79,601/-
and he is entitled for Medical Expenses of Rs.41,900/-.

Accordingly, the compensation awarded by the Tribunal is modified from Rs.3,35,548/- to Rs.2,21,501/- and the same is show as below:

Sl. No.	Heads	Tribunal Award	High Court
1	Pain and Sufferings	Rs.5,000/-	-
2	Transport Expreses	Rs.8,400/-	-
3	Extra Nourishment	Rs.1,000/-	-
4	Attendant Charge	Rs.1,000/-	-
5	Medical Expenses	Rs.41,908/-	Rs.41,908/-
6	Loss of Amenities	Rs.5,000/-	-
7	Loss of earnings	Rs.2,73,240/-	Rs.1,79,601/-
	Total	Rs.3,35,548/-	Rs. 2,21,501/-

Hence, the compensation awarded by the Tribunal is hereby stands modified to the limited extent indicated above.

13. Accordingly, the modified compensation of Rs.2,21,501/- is to be paid to the claimants along with the interest from the date of accident. The appellant / Oriental Insurance Company Limited, is directed to deposit the modified award amount of Rs.2,21,501/- along with the interest, less the amount already paid if any, within a period of eight weeks, from the date of receipt of copy of the judgment and on such deposit, the respondents-claimants are permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS. Thus, the award dated 25.02.2016, passed in M.C.O.P.No.221/2012, stands modified to the limited

extent as indicated above and C.M.A.No.1706/2016 stands allowed in part. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

AT
To
The Motor Accident Claims Tribunal
(Subordinate Judge), Vaniyambadi,
Vellore District.

+1 CC to Mr.J. Chandran, Advocate sr 31367
+1 CC to M/s.M. Malar, Advocate sr 31823.

C.M.A.No.1706 of 2016 and
C.M.P.No.12904 of 2016

PP(CO)
SP(26/11/2021)