IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1721 of 2014
and
M.P.No.1 of 2014

M/s. United India Insurance Company Limited,
Vani Complex, 1st Floor,
Coimbatore Main Road,
Kinathukadavu,
Coimbatore District – 642 109. ... Appellant/3rd Respondent

Vs.

1.D.Manojkumar ... 1st Respondent/Claimant

2.Kalimuthu

3.P.Selvaraj ... Respondents 2 & 3/Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.12.2013 made in M.C.O.P.No.775 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Coimbatore.

For Appellant : Mr.J.Chandran
For R1 : Mr.N.E.A.Dinesh
For R2 : No appearance

JUDGMENT

(The matter is heard through "Video Conferencing/Hybrid Mode".)

This Civil Miscellaneous Appeal has been filed against the award dated 04.12.2013 made in M.C.O.P.No.775 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Coimbatore.

2.The appellant is the 3rd respondent in M.C.O.P.No.775 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Coimbatore. The 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.02.2012.

3.According to 1st respondent, on 07.02.2012 at about 07.45 hours, while he was proceeding in a motorcycle bearing Registration No.TN 38 BL 1330 at a moderate speed on the left side of the road from North to South near Ukkadam Lorrypettai Lorry Owners Association Petrol Bunk, the 2nd respondent / driver of the lorry bearing Registration No.TN 28 X 3883 drove the said lorry in the same direction without giving any sound or horn in a rash and negligent manner without adhering to the traffic rules and regulations, came from back of the 1st respondent, overtook the motorcycle at a high speed and dashed the motorcycle by the left front side of the lorry and caused the accident. Due to the said impact, the 1st respondent was thrown in the road with the motorcycle. Thereafter, the left back wheel of the lorry ran over the right hand of the 1st respondent and due to the same, the 1st respondent sustained multiple grievous injuries all over the body. Immediately after the accident, the 1st respondent was taken to C.M.C.Hospital, Coimbatore for first aid treatment. Thereafter he was shifted to Rex Ortho Hospital, RR Layout, Poomarket, Mettupalayam Road, Coimbatore, where he has taken treatment as inpatient from 07.02.2012 to 28.02.2012 and underwent surgeries on 07.02.2012 and on 09.02.2012. Therefore, he filed the said claim petition for the injuries sustained by him against the respondents 2, 3 and appellant, being the driver, owner and insurer of the lorry respectively.

4.The respondents 2 & 3, being the driver and owner of the lorry remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent. The appellant denied the manner of accident as alleged by the 1st respondent. According to appellant, the 1st respondent only drove the motorcycle in the middle of the road and has not left any space to the oncoming vehicles. The place of occurrence is a busy traffic area and it is not possible for the 2nd respondent to drive the lorry in a rash and negligent manner. The 1st respondent only drove the motorcycle in a rash and negligent manner and caused the accident. Therefore, the owner and insurer of the motorcycle have to be impleaded as necessary parties. Further, the respondents 1 & 2 have to prove that they were possessing valid driving license at the time of accident. The appellant denied the age, injuries, period of treatment taken and medical expenses incurred by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.Manohar was examined as P.W.2 and 19 documents were marked as Exs.P1 to P19. The appellant examined one R.Malathi, Motor Vehicle Inspector as R.W.1 and marked copy of the charge memo as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the 2nd respondent - driver of the lorry belonging to 3rd respondent and directed the appellant-Insurance Company to deposit a sum of Rs.7,23,000/- as compensation to the 1st respondent.

8.Challenging the liability fixed on them as well as the quantum of compensation awarded by the Tribunal in the award dated 04.12.2013 made in M.C.O.P.No.775 of 2012, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that at the time of accident, the fitness certificate issued to the offending vehicle was expired on 01.02.2012. On the date of accident, i.e., on 07.02.1202, the 3rd respondent - owner of the lorry did not renew the fitness certificate. The 3rd respondent allowed the vehicle to ply without permit and fitness certificate. The appellant proved the same by examining the Motor Vehicle Inspector as R.W.1 and by marking the charge memo issued to the 3rd respondent for plying the vehicle without fitness certificate and permit as Ex.R1. The Tribunal ought to have exonerated the appellant-Insurance Company and fixed the liability on the 3rd respondent - owner of the vehicle. The Tribunal erroneously accepted the evidence of P.W.2/Doctor and granted compensation excessively. He further submitted that the amounts awarded by the Tribunal for future medical expenses and loss of amenities are excessive. In any event, the total compensation awarded by the Tribunal is on the higher side and prayed for setting aside the award passed by the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that accident occurred due to the negligence of the vehicle belonging to 3rd respondent. The 1st respondent is third party. For violation of the permit and plying the vehicle without fitness certificate, the 1st respondent cannot be penalised. The Tribunal ought to have directed the appellant-Insurance Company to pay the compensation at the first instance and recover the same from the owner and driver of the vehicle. In support of his contention, he relied on the following judgments and prayed for dismissal of the appeal.

(i) Judgment of the Hon'ble Apex Court reported in 2018 ACJ 1768, [Amrit Paul Singh and others Vs. Tata AIG General Insurance Company Limited and others], wherein the Hon'ble Apex Court at paragraph Nos.23 & 24, held as follows:

> "23. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the

insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle.

24. In view of the aforesaid analysis, we do not perceive any merit in the appeal and, accordingly, the same stands dismissed without any order as to costs.”

(ii) Judgment of the High Court of Kerala reported in 2019 (1) TNMAC 206 (LB) (Ker.), [Pareed Pillai Vs. Oriental Insurance Company Limited], wherein the High Court of Kerala at paragraph Nos.21 & 22, held as follows:

“ ... 21.It has accordingly been declared that, the use of a transport vehicle in a public place without Permit is a fundamental/statutory infraction and the principles laid down in Swaran Singh's case [cited supra] and Lakshmi Chand Vs. Reliance General Insurance [(2016) 3 SCC 100] cannot be applicable in this regard. The Apex Court held, in such circumstances, that the verdict passed by the High Court affirming the stand of the Tribunal directing the insurer to satisfy the liability and to have it recovered from the owner/insured was in consonance with the principles stated in Swaran Singh's case [cited supra] and other cases pertaining to 'pay and recover principle'. From the above, it is quite evident that the law stands settled by the Apex Court as per the MACA No. 2030 of 2015 and connected cases decision Challa Upendra Rao' case [cited supra] and the latest ruling in Amrit paul's case [cited supra]. This being the position, the dictum laid down by the Full Bench of this Court in Augustine V.M. Vs. Ayyappankutty @ Mani and others [cited supra] holding that the absence of valid Permit or Fitness Certificate is not a fundamental breach, but a technical breach and that no right of recovery can be given to the insurer is not at all correct. It accordingly stands overruled.

22. In view of the above finding, nothing remains to be considered in MACA No. 2030 of 2015 and MACA 2641 of 2015 preferred by the insured/owner challenging the right of recovery granted as per the Award passed by the Tribunal [MACT, Irinjalakkuda] in O.P.(MV) Nos. 21 of 2008 and 862 of 2007. Only 'four' grounds have been raised by the appellant, which do not constitute a challenge against the quantum of compensation awarded, but for the right of recovery granted to the insurer [from the insured]. Hence, these appeals stand dismissed. However, dismissal of these appeals will not bar the way of the appellants/insured in resisting the quantum of enhancement sought for by the claimants/appellants in MACA No. 2030 of 2015 and connected cases MACA No. 1414 of 2013 by way of appropriate proceedings."

11.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel. The 3rd respondent remained exparte before Tribunal. Hence, notice to 3rd respondent dispensed with.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13.From the materials on record, it is seen that the 1st respondent has proved that accident occurred only due to rash and negligent driving by the driver of the lorry, 2nd respondent herein belonging to 3rd respondent. It is the case of the appellant that the 3rd respondent permitted the 2nd respondent to ply the vehicle without permit and fitness certificate and thereby violated the policy condition and examined the Motor Vehicle Inspector as R.W.1 and marked the charge memo issued to the 3rd respondent as Ex.R1 and proved their case. The Tribunal considering the oral and documentary evidence let in by the appellant, held that appellant proved that offending vehicle was not having permit and its fitness certificate has expired on

01.02.2012 itself before the date of accident which was happened on 07.02.2012. Having held so, the Tribunal held that there is no defence available for the Insurance Company to evade liability of compensation to indemnify the owner of the vehicle and directed the appellant to pay the compensation to the 1st respondent.

14.It is well settled that liability of Insurance Company to third party is statutory liability and for any violation in policy condition, the Insurance Company cannot be totally absolved from its liability. Motor Vehicles Act is a beneficial legislation and claimants must enjoy the fruits of the award by realising the compensation awarded to them. In the present case, the 3rd respondent has violated the policy condition and permitted the driver to ply the vehicle without permit and fitness certificate. For the said violation, in view of the judgment referred to above relied on by the learned counsel appearing for the 1st respondent, the award of the Tribunal directing the appellant to pay the compensation is modified to the effect that the appellant is directed to pay the compensation to the 1st respondent at the first instance and recover the same from the 3rd respondent – owner of the vehicle.

15.As far as quantum of compensation is concerned, it is the contention of the learned counsel appearing for the appellant that the amounts awarded by the Tribunal for loss of amenities and future medical expenses are excessive. From the award passed by the Tribunal, it is seen that the 1st respondent was aged 20 years and sustained grievous head injury, fractures in his hip and right hand, sacral fracture left side, degloving injury to right axilla, arm, forearm and hand, deep lacerated injuries at his back right side and suffered disfiguration in his face. The 1st respondent proved his disability and injuries by examining P.W.2/Doctor. The appellant did not let in any contra evidence to disprove the evidence of P.W.1/1st respondent and P.W.2/Doctor. The Tribunal considering the age of the 1st respondent that before getting marriage he suffered disfiguration and unable to move his wrist, fingers fully in his right hand and that it will affect the marriage prospects and job opportunities in future, awarded a sum of Rs.1,00,000/- towards loss of amenities. P.W.2/Doctor deposed that the 1st respondent has to undergo another surgery and he is need of minimum hospital stay for 1 ½ months and estimated the expenses at Rs.1,10,000/- towards future medical expenses. The Tribunal considering the evidence of P.W.2/Doctor and documents filed by 1st respondent, awarded a sum of Rs.1,10,000/- towards future medical expenses. The Tribunal considering the entire materials on record, has awarded a sum of Rs.7,23,000/- as compensation to the 1st respondent, which is not excessive warranting interference by this Court.

16.For the above reason, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.7,23,000/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest 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 to the credit of M.C.O.P.No.775 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Coimbatore, at the first instance and recover the same from the 3rd respondent. 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. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Coimbatore.

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

+1cc to Mr.V.Nicholas, Advocate SR.No.65644
+1cc to Mr.J.Chandran, Advocate SR.No.66505

C.M.A.No.1721 of 2014

VBM(CO)
GN(09/02/2022)