IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. Nos.2804 and 2783 of 2014
and
MP. Nos.1, 1 of 2014

National Insurance Co. Ltd.,
Branch Office, 403,
B-10, Karthikeya Complex,
Mettur Main Road,
Bhavani, Erode District. ..Appellant in both the appeals/ 2nd Respondent

Versus

1. Jayanthi
2. K.Sathiyamurthy
3. S.Nallasivam ..Respondents in CMA.No.2804 of 2014/ Petitioners & 1st Respondent

1. Minor Rakshith @ Ranjith
   Rep. by his mother &
   next friend S.Jayanthi

2. S.Nallasivam
R1 rep by his mother and next
friend S.Jayanthi ..Respondents in CMA.No.2783 of 2014/Petitioners & 1st Respondent

PRAYERs: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decrees dated 19.04.2012 made in MCOP.Nos.715 & 716 of 2008 on the file of Motor Accidents Claims Tribunal/Sub Court, Sankari.

In CMA.No.2804 of 2014

For appellant	:	Mr.Arun Kumar
For respondents for RR1 & 2	:	Not Ready in notice
for R3	:	Mr.A.P.Srinivas

In CMA.No.2783 of 2014

For appellant : Mr.Arun Kumar

For respondents
for R1 : Not Ready
for R2 : Mr.A.P.Srinivas

C O M M O N J U D G M E N T S

These appeals are heard through video conferencing.

2.The present appeals have been filed by the Insurance Company, questioning the findings rendered by the Motor Accidents Claims Tribunal/Sub Court, Sankari in MCOP.Nos.715 & 716 of 2008 to pay and recover the compensation amount.

3.For the sake of convenience, the parties are referred to as per the ranking before the Motor Accident Claims Tribunal.

4.The respondents 1 and 2 in CMA No.2804 of 2014, who are the claimants in MCOP No.715 of 2008, are the parents of the deceased minor son, viz., Arjun, and the first respondent in CMA.No.2789 of 2014, who is the claimant in MCOP.No.716 of 2008, is a minor son studying II standard at the time of the accident. In both the claim petitions, the first respondent/S.Nallasivam is the owner of the Eicher Van bearing Registration No.TN 33 U 9919 involved in the accident and the second respondent is its insurer.

5.It is the case of the claimants that, on 13.05.2008 at about 9.00 am, the claimants and their sons were travelling in the Hyundai Accent Car bearing Registration No.TN 33 AA 5049 from Thirupur to Pallipalayam. When they were nearing Chinniyampalayam, an Eicher Van bearing Registration No.TN 33 U 9919 came from the opposite direction in a zigazag manner and on seeing this, the second claimant in MCOP.No.715 of 2008, drove the vehicle to the right side of the mud Road. In spite of that, the said Eicher Van hit the left side of the claimant's Car and the Car fell on a drainage. One Arjun, who is the second son of the claimants in MCOP.No.715 of 2008, was thrown out of the Car and died on the spot and hence, the parents of the deceased made a claim for a sum of Rs.5,00,000/- as compensation in MCOP.No.715 of 2008. Their another son by name Rakshith @ Ranjith sustained grievous injury and took treatment in KMCH Hospital, Erode and hence, he made a claim for a sum of Rs.3,00,000/- as compensation in MCOP.No.716 of 2008.

6.The above claim petitions were resisted by the second respondent/Insurance Company by filing a counter statement denying the manner of accident as projected by the claimants in the claim petitions. It is the specific defence of the Insurance Company that the second claimant in MCOP.No.715 of 2008 had drove the Car on the wrong side of the road without noticing the Eicher Van coming in the opposite direction and dashed against it. Hence, the Insurance Company is not liable to pay any compensation to the claimants. Further, the driver of the Eicher Van has no valid and effective licence to drive the heavy goods vehicle. Thus, he violated the policy conditions and hence, they are not liable to pay compensation to the claimants indemnifying the owner of the Eicher Van.

7.In order to prove the claim on the side of the claimants, the first claimant in MCOP.No.715 examined herself as PW1 and marked Exs.P1 to P10. On the side of the Insurance Company, two witnesses were examined as Exs.RW1 & RW2 and Exs.R1 & R2 were marked.

8.The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Eicher Van. By coming to such conclusion, the Tribunal awarded a sum of Rs.3,50,000/- to the claimants in MCOP.No.715 of 2008 and Rs.30,000/- to the claimant in MCOP.No.716 of 2008 and directed the second respondent/Insurance Company to pay the above amounts at the first instance, and thereafter, permitted the second respondent/Insurance Company to recover the same from the first respondent/owner of the Eicher Van.

9.Though very many contentions have been raised in this appeal, it is the specific contention of the the second respondent/Insurance Company that the driver of the first respondent's Eicher Van had no valid driving licence. The Tribunal even though came to the conclusion that the driver of the first respondent's Eicher Van had violated policy condition, erred in directing the second respondent/Insurance Company to pay the compensation at the first instance and thereafter permitted to recover the same from the first respondent. Since there is a violation of policy condition, the Insurance Company is not liable to pay the compensation.

10. Today, the learned counsel for the second respondent/Insurance Company farily submitted that though the driver of the vehicle did not hold a valid driving licence, it cannot be a ground for rejecting the insurance claim. In support of the above contentions, the learned counsel for the second respondent/Insurance Company relied upon the judgment of the Supreme Court in the case of National Insurance Company vs. Swaran Singh, reported in 2004 3 SCC 297, wherein, it has been

held that though the driver did not hold a valid licence, it could not be a ground for the Insurance Company to repudiate the claim. The relevant portion of the said judgment reads as follows.

> "110. The summary of our finding to the various issues are raised in these petitions is as follows:.....
>
> (iii) ......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.

11. In view of the above judgment and submissions of the learned counsel for the Insurance Company, this Court is of the view that the order passed by the Tribunal is a well justified award and the same does not require any interference by this Court. Accordingly, the Civil Miscellaneous appeals are dismissed. Consequently, the amounts awarded by the Tribunal are confirmed.

12. i) Thus, the second respondent/Insurance Company is directed to deposit a sum of Rs.3,50,000/- before the Tribunal in MCOP.No.715 of 2008 and Rs.30,000/- before the Tribunal in MCOP.No.716 of 2008, with interest at 7.5% p.a. from the date of petitions till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of this judgment. On such deposit, the claimants in MCOP.No.715 of 2008 are entitled to withdraw their respective shares, as apportioned by the Tribunal. Insofar as the minor claimant in MCOP.No.716 of 2008 is concerned, his share shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Bank and it shall be renewed periodically till he attains majority and the interest accrued thereon shall be withdrawn by her mother, once in three months. No costs. Consequently, connected miscellaneous petitions are closed.

ii) The second respondent/Insurance Company, after making payment, is permitted to recover the above compensation amount from the first respondent/owner of the Eicher Van.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

pvs

To

The Subordinate,
The Motor Accident Claims Tribunal
Sankari.

Copy To

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.30317

C.M.A. Nos.2804 and 2783 of 2014

JPL(CO)
RGA(26/07/2022)