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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.3155 of 2019
and C.M.P.No.17896 of 2019

The Divisional Manager,
M/s.The New India Assurance Co. Ltd.,
Pondicherry. ...Appellant / 2nd Respondent

Vs.

1.Thanathipathi ...1st Respondent / Petitioner

2.Raja ...2nd Respondent / 1st Respondent

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.10.2018, made in M.C.O.P. No.24 of 2014, on the file of the III Additional District and Sessions Court, (Motor Accident Claims Tribunal), Cuddalore @ Virudhachalam.

For Appellant : Mr.J. Michael Visuvasam

For Respondents : Mr.P.Thamizhendhi (For R1)
No appearance (For R2)

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 against the judgment and decree dated 30.10.2018, made in M.C.O.P. No.24 of 2014, on the file of the III Additional District and Sessions Court, (Motor Accident Claims Tribunal), Cuddalore @ Virudhachalam.

2.The appellant is the 2nd respondent in M.C.O.P. No.24 of 2014, on the file of the III Additional District and Sessions Court, (Motor Accident Claims Tribunal), Cuddalore @



Virudhachalam. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.06.2012.

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3. According to the 1st respondent, on the date of accident, during his course of employment, when he was driving the Sekar Bus bearing Registration No.TN-31-M-7780 near by Kelacheruvai, Anna Nagar on Titagudi to Tholudur main road, on his left in a careful manner from East to West direction, the driver of the Mahindra and Mahindra Mini Lorry bearing Registration No.TN-46-K-6228 belonging to the 2nd respondent drove the same in a rash and negligent manner from West to East and dashed against the Bus and caused the accident. In the accident, the 1st respondent sustained severe injuries. The accident occurred only due to rash and negligent driving by the driver of the Mini Lorry. Hence, filed the said claim petition, claiming compensation against the 2nd respondent as owner and appellant as insurer of the offending vehicle.

4. The 2nd respondent, owner of the Mini Lorry, 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 accident occurred only due to rash and negligent driving of the Sekar Bus by the 1st respondent and not due to rash and negligent driving by the driver of the Mini Lorry belonging to the 2nd respondent. The 1st respondent has to prove that the Mini Lorry was insured with the appellant and the said vehicle had valid F.C., Permit, R.C. and the driver had valid driving license to ply the vehicle, at the time of accident. In any event, the 1st respondent also has to prove the age, avocation and income, injuries sustained and disability suffered by the 1st respondent, 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 Doctors as P.W.2 and P.W.3 and marked 12 documents as Exs.P1 to P12. The appellant examined the Junior Assistant of R.T.O, Perambalur as R.W.1, their Official as R.W.2 and marked 2 documents as Exs.R1 & R2. One document was marked as Ex.C1.



7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Mini Lorry belonging to the 2nd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.9,63,420/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent.

8.Challenging the award of the Tribunal dated 30.10.2018, made in M.C.O.P. No.24 of 2014, the appellant - Insurance Company has come out with the present appeal.

9.Though the appellant-Insurance Company raised various grounds with regard to quantum of compensation awarded to the 1st respondent, at the time of arguments, the learned counsel appearing for the appellant contended that driver of the Mini Lorry belonging to the 2nd respondent did not possess driving license at the time of accident and hence, the appellant is not liable to pay compensation. The learned counsel further contended that the accident occurred on 21.06.2012. The driver of the Mini Lorry has obtained driving license only on 28.10.2013. The appellant examined the Junior Assistant from Regional Transport Office, Perambalur as R.W.1 and proved that driver of the offending vehicle did not possess driving license on the date of accident. The Tribunal without considering the same, erroneously ordered pay and recovery and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the Tribunal considering the materials placed before it and the judgment of the Hon'ble Apex Court, ordered pay and recovery. The 1st respondent is 3rd party to the Insurance Policy. The Motor Vehicles Act is a beneficial legislation. In view of the same, there is no reason to interfere with the award of the Tribunal and relied on the judgment of the Hon'ble Apex Court reported in AIR 2020 SCC 4453 [Beli Ram Vs. Rajender Kumar and another], the relevant portion of which reads as follows:

"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



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23. When we turn to the facts of the present case there is almost an identical situation where the appellant has permitted to let the first respondent driver drive the truck with an expired licence for almost three (3) years. It is clearly a case of lack of reasonable care to see that the employee gets his licence renewed, further, if the original licence is verified, certainly the employer would know when the licence expires. And here it was a commercial vehicle being a truck. The appellant has to, thus, bear responsibility and consequent liability of permitting the driver to drive with an expired licence over a period of three (3) years. The only thing we note is that fortunately there has been no accident with a third party claimant but the person who has caused the sufferance and sufferer are one and the same person, i.e., the first respondent driver. We are, however, dealing with the determination under the Compensation Act and those provisions are for the benefit of the workmen like the first respondent, even though he may be at fault, by determining a small amount payable to provide succor at the relevant stage when the larger issues could be debated in other proceedings.

The only exception is in the provisos to Section 3 of the Compensation Act, which is not the factual situation in the present case. The relevant provision reads as under:

"3. Employer's liability for compensation.-

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:



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Provided that the employer shall not be so liable--

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding [four] days;

(b) in respect of any [injury, not resulting in death, caused by] an accident which is directly attributable to--

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen."

We are not aware whether any other proceedings have been initiated or not, at least, none that have been brought to our notice. The aforesaid findings of the initial lack of care by the first respondent in not renewing the driving licence would be present, but the lack of care of the appellant as the employer would also arise. We have penned down the aforesaid views as such a situation is quite likely to arise in proceedings under the MV Act where a third party is claiming the amount. Proceedings here being under the Compensation Act, the consequences are not flowing to the first respondent as the initial negligent person."



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.

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12. Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

13. From the materials available on record, it is seen that apart from various grounds raised in the counter statement, the appellant has also taken a stand that driver of the offending vehicle did not possess driving license at the time of accident. In support of the said contention, the appellant examined the Junior Assistant from the Regional Transport Office, Perambalur, as R.W.1 and proved that driver of the offending vehicle obtained license only on 28.10.2013 and did not possess the driving license on 21.06.2012 i.e., on the date of accident. The issue whether the Insurance Company is liable to pay compensation when the driver of the offending vehicle did not possess driving license came up for consideration before the Hon'ble Apex Court in the judgment reported in AIR 2020 SCC 4453 - Beli Ram case (cited supra), relied on by the learned counsel appearing for the 1st respondent. The facts before the Hon'ble Apex Court is, Beli Ram was owner of the Truck insured with the 2nd respondent-Insurance Company in that case and the 1st respondent, Rajinder Kumar was driver. Initially, he had a driving license which was valid upto 06.09.1996. After expiry of license, the driver did not renew the license for three years and accident occurred on 20.05.1999. The driver was injured in the accident and he filed petition before the authority under the Workmen Compensation Act against the owner and insurer of the vehicle. The authority, under the Workmen Compensation Act, by order dated 08.12.2014, awarded compensation, directing the owner and insurer to pay the compensation. The Insurance Company and owner filed separate appeals, questioning the liability fastened on them. The worker also filed appeal for enhancement of the compensation. Before High Court, the Insurance Company took a stand that the driving license of the driver expired on 06.09.1996 and the driver did not renew the same and on the date of accident viz., on 20.05.1999, he did not have a license and hence, insurer is not liable to pay compensation. The High Court accepting the case of Insurance Company, allowed the appeal filed by the Insurance Company and dismissed the appeal filed by



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the owner. The High Court also enhanced the compensation in the appeal filed by the worker. Against the said judgment, the owner filed appeal before the Hon'ble Apex Court. The Hon'ble Apex Court considered the judgment reported in (2004) 3 SCC 297 [National Insurance Co. Ltd. v. Swaran Singh and Ors.] and extracted paragraph Nos. 41 to 45 and 48 of Swaran Singh case. The Hon'ble Apex Court also considered the judgment reported in (2015) 2 TAC 52 [Tata AIG General Insurance Co. Ltd. v. Akansha & Ors.] and held that when the driving license of the driver expired, it amounts that there was no driving license on the date of accident. The Hon'ble Apex Court relied on another judgment of the Himachal Pradesh High Court, reported in 2012 ACJ 1891 [National Insurance Co. Ltd. v. Hem Raj & Ors] and held that Insurance Company is not liable to pay compensation. In paragraph No.21 of the Beli Ram case, the Hon'ble Apex Court has extracted paragraph No.18 of the judgment reported in 2012 ACJ 1891 - Hem Raj case (cited supra), which reads as follows:

"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 insurance company to deposit the amount, the recovery of the same from the insured would follow as the sympathy can only be for the victim of the accident. The right which has to be protected, is of the victim and not the owner of the vehicle. It was, thus, observed in para 18 as under:

"18 When an employer employs a driver, it is his duty to check that the driver is duly licensed to drive the vehicle. Section- 5 of the Motor Vehicles Act provides that no owner or person incharge of a motor vehicle shall cause or permit any person to drive the vehicle if he does not fulfil the requirements of Sections 3 and 4 of the Motor Vehicles Act. The owner must show that he has verified the licence. He must also take reasonable



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care to see that his employee gets his licence renewed within time. In my opinion, it is no defence for the owner to plead that he forgot that the driving licence of his employee had to be renewed. A person when he hands his motor vehicle to a driver owes some responsibility to society at large. Lives of innocent people are put to risk in case the vehicle is handed over to a person not duly licensed. Therefore, there must be some evidence to show that the owner had either checked the driving licence or had given instructions to his driver to get his driving licence renewed on expiry thereof. In the present case, no such evidence has been led. In view of the above discussion, I am clearly of the view that there was a breach of the terms of the policy and the Insurance Company could not have been held liable to satisfy the claim."

14. The Hon'ble Apex Court has held that Insurance Company is not liable to pay compensation and dismissed the appeal, confirming the judgment of the High Court. All the three judgments referred to by the Hon'ble Apex Court are relating to driver not renewing the license after expiry of the validity period. Considering the judgments referred to above, the Hon'ble Apex Court confirmed the judgment of the High Court and held that when there was no driving license for driver to drive the vehicle, the Insurance Company is not liable to pay compensation. The learned counsel appearing for the 1st respondent referred to paragraph Nos. 21 and 23 of the judgment of the Hon'ble Apex Court - Beli Ram case (cited supra) and contended that the Hon'ble Apex Court has held that protection must be given to the claimant and Insurance Company must deposit the amount and recover the same from the insured. In the same paragraph, the Hon'ble Apex Court extracted paragraph No. 18 of the judgment reported in 2012 ACJ 1891 - Hemraj case (cited supra), wherein, it has been held that when a person has not renewed license after expiry, the Insurance Company is not liable to satisfy the claim. In paragraph No. 22, the Hon'ble Apex Court has held that the three judgments referred to in the



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judgment of the Beli Ram's case set forth legal positions and the Hon'ble Apex Court is in complete agreement with views taken in all the three judgments of three different High Courts. A reading of the judgment of the Hon'ble Apex Court in Beli Ram case, makes it clear that when the driver of the offending vehicle did not possess driving license or failed to renew the driving license after expiry of validity period, the Insurance Company is not liable to pay compensation to the claimants. In view of the judgment of the Hon'ble Apex Court in Beli Ram case, the said portion of award of the Tribunal ordering pay and recovery, directing the appellant-Insurance Company to pay at the first instance and recover the same from the 2nd respondent, owner of the vehicle, is erroneous and is liable to be set aside and is hereby set aside. The 1st respondent is entitled to compensation only from the 2nd respondent.

15. In the result, this Civil Miscellaneous Appeal is allowed and the amount awarded by the Tribunal at Rs.9,63,420/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 2nd 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.24 of 2014. 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 the award amount, lying in the credit of M.C.O.P. No.24 of 2014, 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

// True Copy //

Sub Assistant Registrar

gsa



To

1.The III Additional District and Sessions Judge,
(Motor Accident Claims Tribunal),
Cuddalore @ Virudhachalam.

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

+1cc to Mr.J.Michael Visuvasam, Advocate SR.No.5263

C.M.A. No.3155 of 2019

VBA(CO)
RVM(14/09/2021)