BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.04.2021**

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)NO.513 of 2010

A.Jahir Hussain :Appellant/Petitioner

.vs.

1.V.Ramkumar(died),

2.The National Insurance Company Limited,
Branch-II, Jerome Building,
Ist Floor, Fort Station Road,
Trichy-2.

3.Kavitha

4.Yasika

5.Amareswar

6.Viapuri

7.Kaliammal

(R3 to R7 are brought on record as Lrs of the deceased R1 vide order of this Court made in M.P(MD)No.1 to 3 of 2012 in C.M.A(MD)No.513 of 2010, dated 11.12.2020)
:Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act praying this Court to set aside the portion of the award amount relating to the payment of compensation by the first respondent alone and directing the second respondent also to pay the compensation to the appellant in M.C.O.P.No.1119 of 2006, on the file of the III Additional Subordinate Judge's Court, Tiruchirappalli.

For Appellant : Mr.T.Selvakumaran
for M/s.P.Muthiah
For Respondent-2 : Mr.J.S.Murali

JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimant questioning the award passed by the Motor Accidents Claims Tribunal/III Additional Subordinate Court, Trichy in M.C.O.P.No.1119 of 2006.

2.The appellant is the claimant in the original petition and he sought compensation of Rs.2 lakhs for the injuries sustained by him in the accident which had taken place on 04.12.2005. It is alleged that the appellant was a passenger in the bus bearing Registration No.TN 45 P 9155 which is owned by the first respondent and insured with the second respondent. The bus was stopped in the bus-stop to enable the passengers to get in and get down. While the claimant was getting down from the bus, the driver moved it in a rash and negligent manner, resulting the claimant fell down from the vehicle and sustained multiple injuries. He was immediately admitted in the Government Hospital at Trichy where he was treated as inpatient.

3.The second respondent had filed a counter disputing the averments and allegations made in the claim petition. It is also contended that the driver of the offending bus was not having valid driving licence and hence no liability can be fastened on the Insurance Company.

4.The Tribunal, upon appreciation of the oral and documentary evidence, adduced by the parties, held that the accident had occurred due to the negligence of the driver of the bus and further having found that the bus was driven by a person who did not have a valid driving licence, directed the owner to pay the compensation of Rs.85,000/-

5.Mr.T.Selvakumaran, learned counsel representing Mr.P.Muthiah, learned counsel on record, would submit that the claimant is a third party and the accident had occurred due to the negligence of the driver of the bus. Since it was proved before the Tribunal that the vehicile was insured with the second respondent, the insurer is liable to pay the award amount.

6.Per contra, Mr.J.S.Murali,learned counsel appearing for the second respondent/Insurance Company submitted that the evidence produced by the claimant himself established that the driver of the bus did not have valid driving licence and in view of the recent decision of the Honourable Apex Court in the case of ***Belli Ram .vs. Rajinder Kumar and another*** reported in ***2020(2)TNMAC 445(SC)*** and the order passed by this Court in ***C.M.A.Nos.3506 and 3507 of 2014, dated 18.11.2020,*** no interference is required in this matter.

7.In reply, learned counsel appearing for the appellant submitted that the Honourable Apex Court dealt with the matter arising under the Workmen Compensation Act and it cannot be applied to the case on hand.

8.Heard the rival submissions made on either side and perused the materials available on record.

9.It is relevant to point out that the finding of the Tribunal that the occurrence had taken place due to the negligence of the driver of the bus has reached its finality and only questioning the liability, the present appeal has been filed.

10.In the instant case, admittedly the first respondent herein is the owner of the offending vehicle. In the counter filed by the second respondent, it has been categorically stated that the driver of the bus was not holding a valid and effective driving licence. Ex.P4-Judgment of the Criminal Court reveals that the driver of the vehicle was prosecuted under Section 3 r/w Section 181 of the Motor Vehicles Act for non possessing of the licence and it ended in conviction.

11.It is true that the onus is on the Insurance Company to prove that the driver of the vehicle was not holding valid driving licence. But the documents produced by the claimant Ex.P4 clearly shows that the driver of the vehicle did not have a valid driving licence. It is appropriate to mention that the offending vehicle comes under the catagory of public transport vehicle and it is the duty of the owner of the vehicle to verify as to whether the driver was having a valid and effective driving licence before he was entrusted with the vehicle to use it in a public place. Conveniently, he remained exparte before the Tribunal.

12.The Honourable Apex Court in the case ***Belli Ram*** referred to supra, has held that in a case of deliberate negligence on the part of the owner of the vehicle for not having the valid driving licence, the Insurance Company cannot be mulcted with the liability to pay the compensation.

13.The relevant portion of the judgment cited supra, reads as under:

> 8. The only question which has been debated before us, is as set out at the inception of the judgment. The appellant sought to rely upon the 1 (2004) 3 SCC 297 recent judgment of this Court,Nirmala Kothari v. United India Insurance Company Limited.2 The question of law examined in this judgment was as to what is the extent of care/diligence expected of the employer/insured while

employing a driver. The legal position regarding the liability of the insurance company when the driver of the offending vehicle possessed an invalid/fake drivers licence was adverted to for answering this question, by referring to earlier judicial pronouncements and the same was culled out in para 12 as under:

> *''12. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the insurance company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the insurance company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.*

14.As rightly pointed out by the learned counsel for the appellant that the Honourable Supreme Court had an occasion to deal with the case arising under Workmen Compensation Act. It is relevant to mention here that a Single Judge of this Court in ***C.M.A.No.3506 and 3507 of 2014, dated 18.11.2020*** has held that the principle laid down in the case of ***Belli Ram*** *will* be applied to the case arose under the Motor Vehicles Act.

15.At the risk of repetition, it is mentioned here that the offending vehicle is a public transport vehicle and it was the obligation of the owner of the vehicle to verify whether the driver was having valid driving licence before he was permitted to drive it in a public place. Since it has been proved before the Tribunal that the driver was not having valid driving licence at the relevant point of time, I find no illegality in the order of the Tribunal, directing to the owner of the vehicle to satisfy the award amount.

16.In that view, the Civil Miscellaneous Appeal fails and the same stands dismissed. The first respondent/owner of the vehicle is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs,by filing necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsn

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The III Additional Sub-Judge,
(The Motor Accidents Claims Tribunal), Trichy.

Copy to

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.C.SANKAR PRAKASH, Advocate (SR-17036[F] dated 22/04/2021)
+1 CC to M/s.J.S.MURALI, Advocate (SR-17025[F] dated 22/04/2021)

JUDGMENT MADE IN
C.M.A(MD)NO.513 of 2010
21.04.2021

KMK(CO)
TR(09.06.2021) 5P 6C