BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation 18.01.2021

Date of Judgment 23.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.685 of 2015
and
MP(MD)No.1 of 2015

Robert : Appellant/1st Respondent

Vs.

1.Minor Kaladevi
Represented by her mother
and next friend Kanagavalli : R1/Petitioner

2.Royal Sundaram Alliance
Insurance Company Ltd.,
through Branch Manager,
T.V.S Co-operative Stores Buildings,
No.37, Krishnarao Tank Street,
Madurai-625 001. :R2/2nd Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 30.03.2011 made in MCOP No.470 of 2009 on the file of Motor Accident Claims Tribunal (Additional Sub Court), Tirunelveli.

For Appellant : Mr.V.S.Rishikesh
for Mr.H.Arumugam

For R1 and R2 : No appearance

JUDGMENT

Challenge made in this appeal is to the award, dated 30.03.2011 made in MCOP No.470 of 2009 on the file of Motor Accident Claims Tribunal (Additional Sub Court), Tirunelveli.

2.The brief facts of the case are that on 28.05.2009 at about 3.15 pm, the minor claimant, who was alighting from the bus TN-72-K-5172 at Athinathapuram Bus Stop on the Tirunelveli-Tiruchendur main road, the driver suddenly took the bus in a high speed and due to the jerk, the minor claimant lost her balance and fell down from the bus and thereby, she sustained grievous injury over the right leg. She filed a claim petition seeking compensation of Rs.2,00,000/- for the injuries sustained in the accident.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the bus was responsible for the accident and awarded compensation of Rs.1,23,000/- together with interest @ 8% p.a to be paid by the Insurance Company with a direction to recover the same from the owner of the vehicle. Aggrieved over the same, the owner of the bus is before this court as appellant.

4.Heard the learned counsel appearing for appellant and perused the materials available on record. In-spite of giving opportunity to argue the case, there is no representation for the respondents.

5.The dispute is in respect of liability alone. The learned counsel appearing for the appellant/1st respondent submitted that Rule 52 of Central Motor Vehicles Rules 1989 provides for the renewal of the Fitness Certificate by the Licensing Authority before 60 days of expiry and further, on an application, it shall be renewed within 30 days of the expiry of the licence and admittedly, in the present case, the Fitness Certificate granted was valid upto 14.05.2009 and already, the application for renewal was in process as proved through Ex.R3 and hence, the owner of the vehicle is not liable to pay compensation and prays that the Civil Miscellaneous Appeal has to be allowed.

6.It is the case of the 2nd respondent/2nd respondent that the Fitness Certificate for the offending vehicle expires on 14.05.2009 and the appellant/1st respondent applied for renewal of Fitness Certificate only on 29.05.2009 and the Fitness Certificate for the offending vehicle was renewed from 23.06.2009 and the accident took place on 28.05.2009 and hence, at the time of accident, the vehicle has no Fitness Certificate and without Fitness Certificate, driving a vehicle amounts to violation of policy condition and hence, the Insurance Company is not liable to pay the compensation.

7.In this case, to prove that at the time of accident, the offending vehicle had no Fitness Certificate, on the side of the 2nd respondent Insurance Company, the Tiruchendur RTO official and the Insurance Company Official were examined as RW1 and RW2. RW1 deposed that the Fitness Certificate for the offending vehicle expires on 14.05.2009 and the appellant/the 1st respondent failed to renew the Fitness Certificate and he applied for renewal of Fitness Certificate for the offending vehicle only on 29.05.2009, but the accident took place on 28.05.2009 and hence, at the time of accident, there was no Fitness Certificate. RW2 deposed that without proper Fitness Certificate, driving a vehicle amounts to violation of policy condition and hence, the Insurance Company is not liable to pay any compensation to the claimant.

8.The learned counsel appearing for the appellant/1st respondent submitted that at the time of accident, the appellant/1st respondent applied for renewal of the Fitness Certificate and hence, at the time of accident, renewal application is pending and there was insurance coverage for the offending vehicle and hence, the Insurance Company is liable to pay the compensation to the claimant.

9.It is to be noted here that in this case, no document was filed on the rider of the vehicle to prove that prior to the accident, the appellant/1st respondent applied for renewal of the Fitness Certificate for the offending vehicle. In this case, RW1 was summoned to prove that at the time of accident, there was no Fitness Certificate on the date of accident. RW1 deposed that at the time of accident, there was no Fitness certificate for the offending vehicle. To prove it, RW1 produced Exs.R1 and R2. On perusal of Exs.R1 and R2, it reveals that the Fitness Certificate for the offending vehicle expires on 14.05.2009 and the owner of the vehicle applied for renewal only 29.05.2009 and the Fitness Certificate for the offending vehicle was renewed from 23.06.2009 to 22.06.2010. The date of accident is 28.05.2009.

10.On perusal of Ex.R1, it is seen that the owner of the vehicle applied for discharge of the vehicle on 29.05.2009 and the District Collector passed an order for discharge of the vehicle on 10.06.2009 on condition of payment of Rs.9,000/- and it was paid and the offending vehicle was discharged. Hence, it reveals that on the date of the occurrence, there was no Fitness Certificate. Without Fitness Certificate, driving a vehicle amounts to violation of policy condition. On perusal of the evidence of RW1 and RW2 and Exs.R1 andR2, it reveals that at the time of accident, there was no Fitness Certificate. Hence, the argument put forth on the side of the appellant/owner of the vehicle stating that prior to the accident, he applied for renewal of the Fitness Certificate for the offending vehicle and hence, the Insurance Company is liable to pay compensation is not at all acceptable.

11.For all the reasons stated above, it is held that the tribunal has correctly come to the conclusion that on the date of the accident, there was no Fitness Certificate and it amounts to violation of policy condition and ordered for pay and recovery. Therefore, it is not necessary to interfere with the findings of the tribunal.

12.In the result, this Civil Miscellaneous Appeal fails and the same is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To,

1.The Motor Accident Claims Tribunal/
Additional Sub Judge,
Tirunelveli.

2.The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-7637[F] dated 26/02/2021)

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23.02.2021

KG(CO)
KB(16.03.2021) 4P 5C