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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	28.01.2022
DELIVERED ON	21.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.338 of 2015

and

M.P. (MD) No.1 of 2015

The Oriental Insurance Company limited
through its Branch Manager,
Office at 5,G.H.Road,
Theni.

... Appellant/2nd Respondent

Vs

1.Pani Stella (Died),
Arockia Vinoth (Died)

2.Pani sathish
3.Anandha Perumal
4.M/S.Swaraj Arasan Company Firm,
through its Manager,
271/A-1,Madurai Road,
Thatchanallur,
Tirunelveli-627 358.

...R1 & R2 /1 & 3rd petitioners
...3rd Respondent/1st Respondent

5.S.Ramakrishnan .
6.Radhakrishnan

...4th Respondent/3rd Respondent
...5th Respondent/4th Respondent
...6th Respondent/5th Respondent

(Memo dated 16.08.2021 in USR No.17854 is recorded as R-1 died and R-2 who is already on record,recorded as legal heir of deceased R-1 and the deceased Claimant Arockia Vinoth)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the award passed in M.C.O.P.No.425 of 2009, dated 26.07.2013, on the file of the learned Motor Accident Claims Tribunal cum III Additional District and Sessions Judge, Tirunelveli.

For Appellant :Mr.C.Jawahar Ravindran
For R-2 :Mr.G.Mohan Kumar
For R-3 :Mr.M.Saravanan
For R-4 :Mr.H.Arumugam
For R-5 :Mr.I.Robert Chandrakumar
For R-6 :Mr.H.Velava Dhas

**ORDER**

This Civil Miscellaneous Appeal has been filed to set aside the award, dated 26.07.2013 in M.C.O.P.No.425 of 2009, passed by the learned Motor Accident Claims Tribunal cum III Additional District and Sessions Judge, Tirunelveli.

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2.It is a case of fatal accident, which took place on 23.12.2008 at 02.45 p.m., the deceased who is husband of the 1st claimant was riding a motorcycle bearing Regn. No.TN-72-AB-3224 towards west, Tenkasi - Tirunelveli main road, near Esakkiamman Temple, a Tractor bearing Regn.No.TN-72-E-4388 and a Trailer bearing Regn.No.TN-72-E-8427 came from opposite direction with rash and negligent manner and hit against the deceased's motorcycle. Due to the said accident, the deceased has sustained grievous injuries and died.

3.The claimants have filed a claim petition in M.C.O.P. No.425 of 2009 on the file of the learned III Additional District Judge/Motor Accident Claims Tribunal, Tirunelveli, seeking compensation.

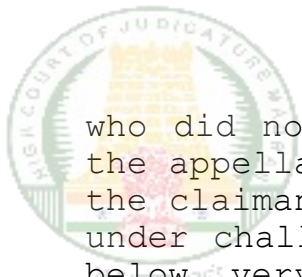
4.Before the Tribunal, on the side of the claimants two witnesses were examined as P.W.1 & 2 and marked eight documents as Exs.P.1 to P.8 and R.W.1 to 3 were examined and Ex.R.1 to 3 were marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the insurance company and also on appreciating the evidences on record, held that the accident was occurred only, due to the rash and negligent driving of the driver of the Tractor and Trailer and the appellant/insurance company was directed to pay the award amount fixed by the tribunal to the claimants.

6. Heard on either side. Perused the material documents available on record.

7.The appellant/Insurance company has filed this appeal to set aside the award, dated 26.07.2013 in M.C.O.P.No.425 of 2009, passed by the learned Motor Accident Claims Tribunal cum III Additional District and Sessions Judge, Tirunelveli.

8.This Civil Miscellaneous Appeal is filed on the ground that the Court below has failed to note that the appellant/insurance company has already let in evidence to discharge onus, to prove that the driver was not having valid licence at the time of accident and the appellant has proved by summoning RTO officials that the driver did not possesses a valid driving license. Hence, the appellant had discharged the burden to prove that the owner had committed a breach of policy condition in allowing the vehicle to be driven by a person



who did not have a valid licence at the time of accident. Hence, the appellant/insurance company is not liable to pay compensation to the claimant. The Court below has also failed to note tht the award under challenge is, however, multiplier method adopted by the Court below, very much exaggerated and disproportionate to the death.

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9. The claimants have filed the claim petition in M.C.O.P.No.425 of 2009 seeking compensation for the death of the husband of 1st claimant who died in road accident on 23.12.2008, at 02.45 p.m., when he was riding a motorcycle from Kandisperi to Oldpettai, a Tractor with Trailer came in the opposite direction in rash and negligent manner and dashed with motorcycle. The deceased sustained with multiple injuries and died in the hospital. The tribunal has awarded a sum of Rs.14,12,000/-as compensation to the claimants.

10. The main contention of the appellant/insurance company is that at the time of accident, the driver of the Tractor and Trailer was not having valid license. Therefore, the tribunal ought to have passed an order for pay and recovery.

11. In support of his contention, the learned counsel appearing for the appellant/insurance company has relied upon the Order passed by the Division Bench of this Court in **C.M.A.No.3044 of 2005, dated 08.09.2010** in the case of **United India Insurance Co., Vs. V.Vijayakumar and others**, is extracted hereunder:

"to avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time, insurance companies, however, with a view to avoid their liability must not only establish the available defences raised in the said proceedings but must also establish breach on the part of the owner of the vehicle, the burden of proof wherefore would be on them, the Court cannot lay down any crieteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case."

12. Per contra, on the side of the 3rd to 6th respondents have contented that the appellant/insurance company has not filed any petition under Section 170 of Motor Vehicle Act and get permission to contest the case. Hence, the appeal filed by the appellant/Insurance company is not maintainable.



13. The appellant/insurance company has relied upon the judgment reported in **2011 (2) TNMAC 481**, in the case of **United India Insurance Company Ltd., Vs. Shila Datta and Ors.**, in which the Hon'ble Supreme Court held as follows:

....

"Where the Insurer is a party-Respondent, either on account of being impleaded as a party by the Tribunal under Section 170 or being impleaded as a party-Respondent by the claimants in the Claim Petition voluntarily, it will be entitled to contest the matter by raising all grounds, without being restricted to the grounds available under Section 149(2) of the Act. The Claim Petition is maintainable against the owner and driver without impleading the Insurer as a party. When a statutory notice is issued under Section 149(2) by the Tribunal, it is clear that such notice is issued not to implead the Insurer as a party-Respondent but merely to put it on notice that a claim has been made in regard to a Policy issued by it and that it will have to bear the liability as and when an award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party-Respondent. But it can however be made a party-Respondent either by the Claimants voluntarily in the Claim Petition or by the direction of the Tribunal under Section 170 of the Act. Whatever be the reason on ground for the Insurer being impleaded as a party, once it is a party-Respondent, it can raise all contentions that are available to resist the claim."

From the above, the appellant/insurance company can raise objections other than defence stated in section 149(2) of Motor Vehicles Act, when he was added as respondent.

14. The paragraph No.6 of the judgment in the case of **The New India Assurance Co. Ltd. Vs. Sanju Behera and Ors, [Equivalent Citations : 2003 ACJ 171, 2001 II OLR 28]** is as follows:

....

"In National Insurance Co. V. Magikhaia Das (after him Mst. Laxmi Dibya and Others): AIR 1976 Orissa 175 a Full Bench of this Court while considering such a question under 1939 Act, observed that under the statutory provision contemplated under Section 96(2) of the Motor

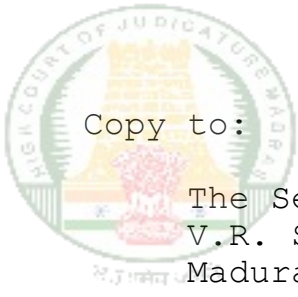


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Vehicles Act, 1939, the insurer which has been made a party to the proceeding for recovery of compensation, can resist the claim any on those grounds mentioned in Sub-section (2) of Section 96 and it was not open to the insurer to raise any other plea. In the decisions in Divisional Manager, United India Insurance Co. Ltd. Vs. Smt. Labanya Sahu and Ors : AIR 1999 Orissa 193, the Divisional Manager, New India Assurance Company Ltd., V Sulochana Jena and Ors. : 87 (1999) C.L.T. 831, this Court has taken the similar view. The Apex Court in the case of Shankarayya and another (supra) considering the aforesaid relevant provisions of Section 170 of the Act, have held that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceeding on merits, only if the condition precedent mentioned in the sections are found to be satisfied and for that purpose the Insurance Company has to obtain an order in writing from the Tribunal and the said order should also be a reasoned one. The Apex Court further held that unless the procedure is followed, the Insurance Company cannot have a wider defence on merit than what is available to it by way of statutory defence. The implettion of the Insurance Company in the claim petition by the claimant and its participation in the said proceeding, cannot be construed as an order of the Tribunal permitting the Insurance Company to avail of a larger defence on merit."

15. The paragraph No.4 of the Judgment in **First Appeal No.189 of 2019** in the case of **I.C.I.C.I. Lombard General Vs. Smt. Surekha Wd/O Prakash Ghurde and Ors**, passed by the Bombay High Court is extracted hereunder:

"On the other hand Shri. R.D. Bhuibhar, learned counsel for the appellant submitted that even though such permission was not sought by the insurer under Section 170(b) of the said Act, in the light of the law as laid down in Nicolletta Rohtagi and Shila Datta and ors. (supra) which decisions have been considered by the learned Single Judge in United India Insurance Company vs. Gulam Mohammad and ors. 2016(6) Mh.L.J. 601 for holding such appeal to be maintainable 5 fa189.19 without any leave having been sought from the Claims Tribunal, the appeal deserves to be entertained on merits. The



Copy to:

The Section Officer,
V.R. Section,

Madurai Bench of Madras High Court, Madurai - 2 Copies

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+1 CC to MR.G.Mohankumar, Advocate (SR-7572 dated 21/02/2022)

+1 CC to MR.H.Arumugam Advocate (SR-7934 dated 22/02/2022)

+1CC to MR.R.Subramanian Advocate (SR-7707 dated 22/02/2022)

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ARK (CO)

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