IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2220 of 2021
and
C.M.P. No. 12248 of 2021

The Branch Manager,
M/s. The New India Assurance Co. Ltd.,
B.O. 720703 at 99/C-3, I Floor,
Opp. to New Bus Stand, Permabalur. ... Appellant / 2nd Respondent

Vs.

1. Chellapillai
2. Saroja ... Respondents / Petitioners

3. Bharath Agencies,
No.223, Attur Road,
Madanagopalapuram,
Perambalur - 621 212. ... Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 28.01.2020 passed in M.C.O.P. No.267 of 2014 on the file of the Sessions Judge, Mahila Court, Motor Accident Claims Tribunal, Perambalur.

For Appellant : Mr. M. Krishnamoorthy

For RR1 & 2 : Mr. T. Gobinath

For R2 : Mr. G. Ilamurugan

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JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the liability to pay compensation awarded in M.C.O.P. No.267 of 2014, dated 28.01.2020 on the file of the Sessions Judge, Mahila Court, Motor Accident Claims Tribunal, Perambalur, wherein the appellant-insurance company is directed to pay compensation to the claimant herein.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the claimants, who are the parents of the deceased Sathishkumar is that on 23.10.2020 at about 04:00PM, the deceased Sathishkumar has drove the Maruti Swift car bearing Registration No.TN-06-C-7312 belongs to the first respondent-company on the extreme left hand side of the road, while the deceased reached near the bend of

Koneripalayam, a dog suddenly crossed the road, hence, the deceased had applied sudden brake, in which car was capsized and the deceased sustained fatal injuries and was died on the way to the hospital. A criminal case was also registered in Cr.No.1060/2013, u/s. 304A of I.P.C on the file of the Perambalur Police Station. Since, the deceased Sathishkumar was a Salesman cum driver of the first respondent and the second respondent being the insurer of the above car, the claimants have filed a claim petition seeking compensation for a sum of Rs.15,00,000/- along with interest under Section 163-A of the Motor Vehicle Act, before the Motor Accident Claims Tribunal.

4. The first respondent, under whom the deceased Sathishkumar was working as a Salesman cum driver filed a counter and denied the manner in which the accident has taken place and contended that the deceased is responsible for the accident and also stated that his car is insured with the second respondent and the deceased had a valid driving licence at the time of accident, hence, the second respondent is liable to pay any compensation to the claimants.

5. The second respondent - insurance company has filed a counter

and contended that the accident was taken place only due to the negligent act on the part of the deceased, hence, claim is not maintainable under Section 163-A of the Motor Vehicle Act and disputed the age, income of the deceased and dependency of the claimants.

6. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.21 were marked and on the side of the respondents, R.W.1 to R.W.3 were examined and Exs.R.1 to R.9 were marked.

7. Based on the evidence placed on record, the Tribunal in point no.1, has held that, though there was no third party involvement in the accident, but the deceased died during the course of his employment under the first respondent that too in a road accident and the car, which involved in the occurrence is also insured with the second respondent - insurance company, the claimants are entitled to get compensation from the respondents. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.10,12,800/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization payable

by the second respondent - insurance company to the claimants.

8. Aggrieved over the liability fixed on the insurance company to indemnify the first respondent, who is owner of the car bearing Registration No.TN-06-C-7313, the insurance company has filed this appeal.

9. The learned counsel appearing for the insurance company has submitted that case has been filed u/s. 163-A of Motor Vehicles Act and also relying Section.167 of Motor Vehicles Act. The claim made under section 163-A of Motor Vehicles Act, the claimants need not prove the negligence or fault on the part of the respondent for claiming compensation. However, in this case, the deceased himself is a tortfeasor, then section 163-A could not be invoked to claim compensation since it is based on the fault liability. The Hon'ble Apex Court judgment in ***Ram Khiladi and another vs. the United India Insurance Co. Ltd. and another [2020 (1) TNMAC 1 (SC)]*** and subsequent judgments followed by this High Court has held that the claimants are not entitled to get compensation from the insurer if there is no involvement of any third party vehicle in the accident. In this case, the claimants have stated that the accident has taken place without involvement

of any third party and the accident was caused only due to the tortious act on the part of the deceased, hence, the claim made under section 163-A is not permissible. The deceased was working only as a Salesman not as a driver and he was not supposed to drive the car, which is not related to his employment.

10. The learned counsel appearing for the claimants submitted that the deceased was engaged to sell the tyres of the first respondent Unit, accordingly, he used to travel to various places as a Salesman and also he drives the car as a capacity of driver cum Salesman, hence prays to confirm the award of the Tribunal.

11. Heard the submissions made on both sides and perused the materials placed on record:

12. On perusal of the evidence of P.W.1, who is the father of the deceased, it shows that his son was a M.B.A. Graduate and he has obtained a driving licence however, in his evidence, he has deposed that they do not have car with them and further deposed that his son has not completed his studies and he has joined with the first respondent company, who owns a

Petrol Bunk and also sell tyres. In his evidence, he further denied the suggestion that his son was selling only the tyres of the first respondent unit and he was not engaged for driving the car and he has also denied the fact that his son was not having a valid driving licence and not qualified to drive the car. However, the licence and the appointment order of the deceased was not produced before the Tribunal to show that the deceased was a Salesman cum driver of the first respondent company.

13. The second respondent – insurance company has also examined the Officials of the Road Transport Office as R.W.3., who has stated that based on the address belongs to the deceased, there is no driving licence available in their Office. The first respondent has also not come forward to produce any appointment order to show the nature of employment of the deceased. The second respondent have also relied on the evidence of the Sub Inspector of Police, who investigated the criminal case registered related to the accident and according to him, in the F.I.R., which is marked as Ex.P.1, it has been stated that the deceased was working as a Salesman and no where it is stated that he was engaged as a driver. The insurance policy, which is marked as Ex.P.21 shows that the policy also covers the driver of

the car and also there is a coverage for the employees, who drives the car. In this case, the deceased himself has driven the car and there is no evidence placed on record to show that he is having a valid driving licence to drive the car. Per contra, there is a evidence placed on record by the second respondent – insurance company that the deceased was not possessing a valid driving licence at the time of accident, which is based on the records maintained by the concerned Road Transport Office. This shows that the deceased himself has driven the car without valid driving licence and also his tortious act has resulted in the accident. Based on the evidence, the nature of the work carried by the deceased also shows that he was working only as a Salesman in the first respondent company and not a Salesman cum driver.

14. On perusal of the insurance policy, it shows that the car, which was involved in the accident registered in the name of the first respondent company and it is a private owned car, which is used for personal purposes. The award of the Tribunal has not discussed all the above aspects and proceeded without discussing the relationship between the parties more particularly the employee – employer relationship and regarding the nature of the work carried out by the deceased and the reason for engagement of the

deceased to drive the car belongs to the first respondent. The evidence adduced by the insurance company shows that the deceased was only engaged as a Salesman and he is not engaged as a "Salesman cum driver" and there is also no evidence placed on record to prove that the nature of work of the deceased involves driving of car in selling the tyres of the first respondent unit.

15. Based on the above aspects, in this case, the deceased himself is termed as a tortfeasor since, the accident has taken place without involvement of any third party, the claimants are not entitled to claim compensation under Section 163-A of the Motor Vehicle Act. Further, it is established by the insurance company that the deceased was not having a valid driving licence, which is a clear violation of insurance policy condition and engagement of the deceased by the first respondent to drive the car that too without a valid driving licence is not permissible.

16. Hon'ble Apex Court in ***Beli Ram Vs. Rajinder Kumar and Ors. [MANU/SC/0993/2020]*** has held that, if the owner of the vehicle failed to take precaution of verifying the driving licence of his employee, is not

entitled to get coverage of insurance policy. According to the first respondent, he has engaged the deceased as Salesman cum Driver, even though there is no evidence placed on record to show that the deceased was engaged not only as salesman but also to drive the car, the compensation shall be payable only by the first respondent. The insurance company is not liable to indemnify the first respondent, even if the claim is maintainable under Workman Compensation Act. Accordingly, the first respondent, who is the employer of the deceased alone is liable to pay the compensation to the claimants herein and the second respondent – insurance company is not liable to indemnify the first respondent. The award of the Tribunal in fixing the liability on the second respondent - insurance company is not valid and this Court directs the first respondent, who is the employer of the deceased to pay the compensation awarded by the Tribunal to the claimants.

17. In the result, this Civil Miscellaneous Appeal is allowed. The first respondent is directed to deposit the entire compensation awarded by the Tribunal along with interest and cost within a period of six weeks from the date of receipt of this order. Consequently, connected civil miscellaneous petition stands closed. No cost.

27.11.2023

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Sessions Judge, Mahila Court,
   Motor Accidents Claims Tribunal,
   Perambalur.

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

K. RAJASEKAR, J.

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