IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2159 of 2018
And
C.M.P.No.16868 of 2018

United India Insurance Company Ltd.,
No.28, Mailam Road,
Meenakshi Complex,
II Floor, Tindivanam – 604 001. ... Appellant

Vs.

1.A.Natesan
2.N.Sarasu
3.N.Hamsa
4.P.Selvam ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 23.11.2015 made in M.C.O.P.No.615 of 2014 on the file of the Motor Accidents Claims Tribunal, (Special District Court), Salem.

For Appellant : Mr.D.Bhaskaran
For Respondents : R1 - Died
Mr.Sharukumar for R2 and R3
R4 – Not Ready Notice

J U D G M E N T

The second respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the award and decree dated 23.11.2015 passed by the Motor Accidents Claims Tribunal (Special District Court), Salem, in M.C.O.P.No.615 of 2014.

2.The brief facts of the case is that on 13.02.2010, at about 4.15p.m., the deceased N.Loganathan was riding the two wheeler bearing Registration No.TN 30J 4916 towards Salem near Thekkalur Bridge along with his friend one Neelamegam. At that time, a lorry bearing Registration No.TDF 7144 driven by its driver in a rash and negligent manner tried to overtake the two wheeler and dashed against the two wheeler, due to which, the deceased died on the spot.

3.Thereafter, the dependants of the deceased N.Loganathan/ respondents 1 to 3 filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.36,23,000/-. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.8,85,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation and costs and directed the appellant Insurance Company to deposit the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the Tribunal has awarded just and reasonable compensation, however, the appeal has been filed on the ground that the offending vehicle owner cum driver of the lorry insured with the appellant did not possess valid licence at the relevant point of time and produced fake licence obtained from the Calcutta Transport Authority. The appellant came to know about the same only after passing of the award and hence, the appellant has filed this appeal.

5.The learned counsel appearing for the respondents 2 and 3/ claimants submitted that the appellant should have substantiated that the offending vehicle owner cum driver of the lorry insured with the appellant did not possess valid licence at the relevant point of time and produced fake licence obtained from the Calcutta Transport Authority, before the Tribunal. Without doing so, raising such plea before this Court is not sustainable.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 2 and 3 claimants. Though the appeal has been filed during the year 2018, till date, the appellant has not taken any steps to serve notice on the fourth respondent. Considering the pendancy of the appeal, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

7.Admittedly, on 13.02.2010, at about 4.15p.m., the deceased N.Loganathan was riding in the two wheeler towards Salem near Thekkalur Bridge along with his friend one Neelamegam. At that time, a lorry driven by its driver in a rash and negligent manner tried to overtake the two wheeler and dashed against the two wheeler, due to which, the deceased died on the spot.

8.The accident and the manner in which the accident happened are not disputed. The only dispute is that the offending vehicle owner cum driver of the lorry insured with the appellant did not possess valid licence at the relevant point of time and produced fake licence obtained from the Calcutta Transport Authority and the appellant came to know about the same only after passing of the award.

9.The appellant should have substantiated that the offending vehicle owner cum driver of the lorry insured with the appellant did not possess valid licence at the relevant point of time and produced fake licence obtained from the Calcutta Transport Authority, before the Tribunal. However, such plea was not raised before the Tribunal and no additional document was produced before this Court to substantiate the same. Hence, raising such plea before this Court is not sustainable.

10.The Hon'ble Apex Court has considered similar issue in the decision reported in ***2023 SCC OnLine SC 1398 (IFFCO Tokio General Insurance Co. Ltd. Vs. Geeta Devi and Others)*** and it is useful to extract hereunder the relevant portion of the said decision:

> *"12.Thereafter, in National Insurance Co. Ltd. vs. Swaran Singh and others3, a 3-Judge Bench of this Court dealt with the interpretation of Section 149 of the Act of 1988. The cases before the Bench involved, amongst others, instances where the driving licence produced by the driver or owner of the vehicle was a fake one. The Bench noted that*

Section (2004) 3 SCC 297 149(2)(a) opened with the words: 'that there has been a breach of a specified condition of the policy', which would imply that the insurer's defence of the action would depend upon the terms of the policy. It was observed that an insurance company which wished to avoid its liability is not only required to show that the conditions laid down in Section 149 (2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. Such a breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the insured vehicle in breach of the provisions. The Bench went on to state that where the insurer, relying upon the violation of law by the assured, takes exception to pay the assured or a third party, it must prove a willful violation of the law by the assured. Noting that the proposition of law is no longer res integra that the person who alleges breach must prove the same, the Bench observed that an insurance company would be required to establish the said breach by cogent evidence and in the event an insurance company fails to prove that there has been breach of the conditions of the policy *on the part of the insured, such an insurance company cannot be absolved of its liability.*

16.As already pointed out supra, once a seemingly valid driving licence is produced by a person employed to drive a vehicle, unless such licence is demonstrably fake on the face of it, warranting any sensible employer to make inquiries as to its genuineness, or when the period of the licence has already expired, or there is some other reason to entertain a genuine doubt as to its validity, the burden is upon the insurance company to prove that there was a failure on the part of the vehicle owner in carrying out due diligence apropos such driving licence before employing that person to drive the vehicle. Presently, no evidence has been placed on record whereby an inference could be drawn that the deceased vehicle owner ought to have gotten verified Ujay Pal's driving licence. Therefore, it was for the petitioner-insurance company to prove willful breach on the part of the said vehicle owner. As no such exercise was undertaken, the petitioner-insurance company would have no right to recover the compensation amount from the present owners of the vehicle. The impugned order passed by the Delhi High Court *holding to that effect, therefore, does not brook interference either on facts or in law.”*

[Emphasis added]

11.The decision cited supra is squarely applicable to the present case on hand. Without adducing any additional evidence, fresh plea cannot be raised before this Court. Hence, the appeal is liable to be dismissed.

12.The civil miscellaneous appeal is dismissed. The award and decree dated 23.11.2015 passed by the Motor Accidents Claims Tribunal (Special District Court), Salem, in M.C.O.P.No.615 of 2014, is confirmed. Liberty is granted to the appellant Insurance Company to proceed as against the owner of the vehicle in the manner known to law.

13.The appellant Insurance Company is directed to deposit the entire award amount before the Tribunal less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 2 and 3/ claimants are permitted to withdraw their respective share as apportioned by the Tribunal with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

14.Respondents 1 and 2 are the parents of the deceased and the third respondent is the sister of the deceased. Perusal of records reveal that the first respondent has died. Hence, the respondents 2 and 3 are permitted to withdraw the share of the first respondent equally, with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

15.The civil miscellaneous appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

02.11.2023

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal
(Special District Court), Salem.

M.DHANDAPANI,J.
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