IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1542 of 2020
and
CMP.No.11367 of 2020

The New India Assurance Co. Ltd.,
Bombay Mutual Buildings,
232, NSC Bose Road,
Chennai 600 001. ... Appellant

Vs.

1.P.Gnanam
W/o.Purushothaman

2.P.Vinoth
S/o.Purushothaman

3.Mohana Priya
D/o.Purushothaman

All are residing at
Door No.25, Sivalingapuram,
K.K.Nagar, Chennai 600 078.

4.M/s.Venlite (India) Pvt. Ltd.,
No.39, GNT Road,
Gummidipoondi,
Tamil Nadu 601 201. ... Respondents

Prayer : Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.11.2019 made in MCOP. No.3129 of 2018 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) at Chennai.

For Appellant : Mrs.R.Sree Vidhya

For Respondents : Mr.K.Varadha Kamaraj (for R1 to R3)

R4 - No appearance

J U D G M E N T

The Appeal has been filed against the Judgment and Decree dated 12.11.2019 made in MCOP. No.3129 of 2018 on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) at Chennai.

2.The Insurance Company is the Appellant herein, challenging the award passed in MCOP. No.3129 of 2018, dated 12.11.2019, on the file of the Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes) at Chennai, on the ground of liability alone.

3.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4.Learned counsel for the Insurance Company would contend that on the date of the accident, the offending vehicle does not possess any valid fitness certificate. The claim Petitioners filed claim Petition seeking compensation for the death of one Purushothaman, who is the husband of the 1st claim Petitioner in a road accident occurred on 28.03.2018.

5.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the offending vehicle, insured with the 2nd Respondent/Insurance Company, quantum of compensation are not under challenge in this Appeal and hence, the findings rendered by the trial Court in this regard are hereby confirmed.

6.The Insurance Company filed counter statement before the Tribunal, denying various allegations and pleaded that the vehicle involved in the accident having Reg. No.TN 18 M 1834 is not having any valid and effective fitness certificate. It is a specific case in the counter filed by the Insurance Company that the fitness certificate of the offending vehicle/van was expired on 26.03.2018.

7.During the trial, PW1 & PW2 were examined & Ex.P.1 to Ex.P.16 were marked on the side of the claim Petitioner and RW1 & RW2 were examined & Ex.R.1 to Ex.R.7 were marked on the side of the Insurance Company.

8.Heard the learned counsel appearing for the Insurance Company and the learned counsel appearing for the claim Petitioners.

9.On perusing Ex.R1/copy of insurance policy, Ex.R2/copy of MVI report of the Van/offending vehicle, Ex.R3/copy of notice issued to the owner of the offending vehicle, Ex.R.6/letter from the Regional Transport Inspector Grade I, Gummidipoondi, Ex.R.7/Form 24 (copy of Motor Vehicle Register), the trial Court has held that both the owner of the vehicle and the Insurance Company are jointly and severally liable to pay compensation.

10.After hearing the rival submission of the parties and on perusal of records, I find that on the date of the accident, the offending vehicle does not possess any valid fitness certificate. The fitness certificate was expired on 26.03.2018, whereas the accident was occurred on 28.03.2018. Following the Judgment of this Court in the case of ***New India Assurance Co. Ltd., Vs. Palanisamy and others*** reported in ***2008 (1) TN MAC 191*** and the judgment rendered by this Court in the case of C.M.A.No. 1576 of 2015, dated 19.04.2021 (***United India Insurance Co. Ltd V R. Vivekanandan***), I find that expiry of fitness certificate is a violation of policy condition and therefore, the Insurance Company is not liable to pay the compensation. However, following the judicial decisions, I am inclined to modify the order of the Tribunal as that of "Pay and Recover".

11.It is represented by the learned counsel for the Insurance Company that the entire award amount fixed by the Tribunal was already deposited before the Tribunal. Therefore, the Insurance Company is permitted to recover the same from the owner of the offending vehicle/4th Respondent herein.

12.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above. No Costs. Consequently, connected Miscellaneous Petition is closed.

(ii) the Insurance company is permitted to recover the award amount, which was already deposited, from the owner of the vehicle.

(iii) the claim Petitioners are permitted to withdraw the award amount with proportionate accrued interest and costs, as per the ratio fixed by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

10.01.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order

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To

The Chief Judge,
Court of Small Causes,
Chennai.

RMT.TEEKAA RAMAN.J,

sai

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Dated:10.01.2023