IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2023

CORAM

THE HONOURABLE Mr.JUSTICE K.RAJASEKAR

C.M.A.Nos.1897 to 1899 of 2014

E.Muthusamy ... Appellant in C.M.A.No.1897 of 2014

P.Sathiyanarayanan ... Appellant in C.M.A.No.1898 of 2014

M.Palani ... Appellant in C.M.A.No.1899 of 2014

Vs.

1. P.Anil Babu

2. ICICI Lombard General Insurance Co Ltd,
Zenith Road, Kesava Rao,
Khadi Marketing, Mahalakshmi,
Mumbai 400 034.

3. P.Sivakumar

4. The Divisional Manager,
United India Insurance Company Ltd,
Ranipet. ... Respondents in all the petitions.

Common Prayer: Appeals filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment of the decree dated 21.02.20214 made in M.C.O.P.No.196, 197 and 198 of 2008 on the file of the Motor Accident Claims Tribunal (Sub-Court), Ranipet, Vellore District.

For Appellants .... Mr.C.Prabakaran

For respondents .... R.1 and R.3
- set ex parte
Ms.K.Poomalai for R.2

Mr.M.J.Vijayaraghavan for R.4

Common Judgment

Being dissatisfied with the compensation awarded by the Motor Accident Claims Tribunal (Sub-Court), Ranipet, in M.C.O.P.Nos. 196 to 198 of 2008, respectively, absolving the insurance company, claimants have preferred the instant appeals. Since all the appeals arise out of the common Award, all the appeals were heard together and disposed of by this common judgment. For convenience, the parties are referred as per their rank in the claim petitions.

2. The case of the claimants is as follows:-

On 7/9/2008, at 4.45 a.m., when the claimants were travelling in a Maruthi Omni van bearing Registration No. TN-07-B-8411 on Vellore to Ambur Road, Opp. to Kinkiniamman temple, driver of the Omni car, parked the vehicle on the left side of the road for doing some mechanical work. At that time, Eicher van bearing Registration No.KA-27-3001 belongs to the first respondent driven by its driver in a rash and negligent manner, dashed on the Omni car, causing injuries to the claimants herein. A criminal case was registered against the driver of Eicher, in Crime No.405 of 2008, under Sections 279 and 337 of the Indian Penal Code, 1860.

3. The first and second respondents are the owner and insurer respectively of Eicher van. Third respondent is the owner of Omni van. Fourth respondent is the insurer of Omni van in which the claimants have travelled. Based on the injuries sustained, claimants have claimed compensation from the first and second respondents.

4. Before the Tribunal, respondents 1 and 3, vehicle owners have not contested the claim and remained ex parte.

5. The second respondent Insurance Company filed a counter and contended that Maruti Omni van was parked without due care and caution in the highway in a negligent manner, which resulted in causing accident and the driver of van Maruthi Van bearing No.TN-07-B-8411 was responsible for the accident.

6. The fourth respondents has filed a counter stating that the claimants have travelled in Maruthi car as passengers and there is a violation of policy

condition since the car was used for hire. The vehicle was not suffered any mechanical defect, warranting parking of the vehicle on the road. The driver of Eicher van was not having proper driving licence to drive the goods vehicle and hence, there is a violation of policy conditions. Hence, prays to dismiss the appeals.

7. Before the Tribunal, on the side of the claimants, P.Ws.1 to 4 were examined and Exs.P. 1 to P.9 were marked. On the side of the respondents, R. Ws.1 to 4 were examined and Exs.R.1 to R.7 were marked. Based on the evidence placed on record, the Tribunal has considered Point No. 1 that there is a policy violations made by both the vehicle owners. Hence, both the Insurance Company are not liable to pay compensation and also that both the drivers are responsible for the accident.

8. In point No.2, the Tribunal has quantified the compensation to be paid. Accordingly, in M.C.O.P.Nos.196 to 198 of 2008, the amount awarded was Rs.1,50,000/-, Rs.27,000/- and Rs.27,000/-, respectively, along with interest, at the rate of 7.5%, from the date of interest till the payment. The compensation shall be payable by the first and third respondents equally.

9. Aggrieved over the award, claimants have filed three separate appeals, seeking modification of the award.

10. Heard Mr.C.Prabakaran, learned counsel for the appellants, Ms.K.Poomalai, learned counsel for the second respondent and Mr.M.J. Vijayaraghavan, learned counsel for the fourth respondent.

11. The learned counsel for the claimants has submitted that the accident was occurred due to the rash and negligent driving of the driver of the Eicher van and the Tribunal without properly appreciating the point regarding the negligent act on the part driver of Eicher van proceeded on the grounds of violation of policy conditions and held that since the drivers of both vehicles have violated the policy conditions both are liable to pay the compensation. There is no specific finding regarding the person who is responsible for the accident. Even though evidence has been adduced on the side of the claimants the Tribunal has not considered the same, has caused great prejudice to the case of the claimants, hence prays to consider the case of the claimants and award compensation as claimed by them. It is also held by the Tribunal that there is violation of policy conditions on the side of the driver of the Eicher van, since he was not possessing valid driving license to

drive the Eicher van, which is not sustainable, since the Hon'ble Apex Court has clarified in ***MUKUND DEWANGAN Vs. ORIENTAL INSURANCE CO. LTD*** {2017 (2) TNMAC 145 (SC), that a person who is having light motor vehicle license is entitle to drive the vehicle which is having unladen weight of 7500 Kgs. In this case, the unladen weight of the van is less than 7500 kgs, hence the driver of the Eicher van shall be considered as a person authorized to drive the same. Hence this finding is also required to be set aside.

12. The second respondent/ICICI Lombard would submit that since there is a violation of the policy condition i.e., driver of Eicher van is not having license to drive the goods vehicle and since there is a policy condition, Insurance Companies, not liable to indemnify the compensation and hence prays to confirm the award of the Tribunal.

13. The learned counsel appearing for the United India insurance Company respondent No.4 submitted that there is a clear finding of the Tribunal that there is a violation of policy condition by the third respondent since he has used the vehicle for hire which would disentitle him from getting any relief from the Insurance Companies and the claimants are not

entitled to enhance the amount fixed by the Tribunal and the Tribunal has rightly exonerated and prays to confirm the same.

14. The Hon'ble Apex Court in ***MUKUND DEWANGAN Vs. ORIENTAL INSURANCE CO. LTD*** (2017 (2) TNMAC 145 (SC), has held that when a Driver is authorized to drive a light motor vehicle, he can drive transport vehicle which is having unladen weight of 7500 kgs.

15. This Court in ***NATIONAL INSURANCE COMPANY LIMITED Vs. S.SANKARA NARAYANAN AND 11 OTHERS*** {2013 (2) TNMAC 73 (DB), has held as under:

> *"33. The liability to pay compensation under Section 140 of Motor Vehicles Act is on the principle of no fault. Evn though there was violation of policy conditions, perhaps the injured claimants were lured to take the vehicle on hire only to accommodate eight perosn. As such the claimants cannot be faulted by the violation committed by the 1st respondent........."*

16. The Tribunal in point No.1 has considered the evidence adduced on the side of the claimants relating to negligent act on the side of the driver of Eicher van and also taken note pleadings of respondent No.2. However it

has not rendered specific finding about the negligent act alleged by claimant, Tribunal has deviated from this issue and considered the violation of policy conditions in the later portion and decided in point No.1 that there is violation of policy conditions by the drivers of both vehicle belongs to first and third respondent respectively and directed them to pay the compensation.

17. The case of the claimant is that on 07.09.2008 they have traveled in a in Maruthi Omni car bearing registration No.TN 07 B 8411 van on Vellore to Ambur Road and they have parked the vehicle near Kinkiniamman temple, and driver of the vehicle was doing some mechanical work in the car. It is also stated by them that they have parked the vehicle cautiously on the left hand side of the Road and at that about 04.45 a.m., Eicher van belongs to the first respondent bearing registration No.Ka.27 3001 driven by its driver in a rash and negligent manner, came in the high speed and hit on the rear side of the Maruthi Omni van, which resulted in causing injuries to the claimants who were sitting inside the car. It is also stated by the claimants that with regard to the accident FIR was also registered against the driver of the first respondent in Crime No.405 of 2008, under Section 279, 337 of IPC before the Police Station. All the three injured

persons were also adduced evidence on their side. In the cross examination injured have also categorically stated that the car was parked cautiously on the left hand side of the road and the hazard light of the car was also lighting and they have not parked the car in negligent manner. On the side of the respondents no witness was examined to speak about the manner in which the accident had taken place and none of the vehicle drivers was also not examined. In the absence of any evidence, to contradict the evidence of the claimants, the Tribunal ought not to have held that drivers of both the vehicle are responsible for the accident. Further the finding of the Tribunal fixing the liability on the drivers of both the vehicle, since both the vehicles have violated the policy conditions and mere violation of policy is not a ground to hold that drivers of both the vehicles have driven the vehicle negligently. Hence, this Court is of the view that the Tribunal ought to have accepted the case of claimants that the driver of the Eicher van is alone responsible for the accident. Accordingly, this Court set aside the above said finding by holding that the driver of Eicher van belongs to first respondent is responsible for the accident. The Tribunal has also held that there is a violation of the policy conditions, since the driver of the first respondent's Eicher van was not possessing valid driving license to drive the Eicher van which is goods vehicle.

18. The Hon'ble Apex Court in ***National Insurance Company vs. Swaran Singh & Ors.***, reported in 2004 (3) SCC 297, has held that in the case of non possessing of driving license principle of pay and recover has to be adopted, if the injured are third parties. By applying this principles, Tribunal ought to have directed the insurance company/ second respondent to pay the compensation and to recover the same from the first respondent herein, instead the Tribunal has absolved the liability of the insurance company on the ground of violation of the policy condition which is liable to be set aside. Accordingly, in this case, the second respondent is insurance company is directed pay the compensation and to recover the same from the first respondent herein.

19. The Tribunal has also held that the owner of the omni van has also violated policy conditions, since he allowed claimants to travel in the vehicle by collecting fare. Since the omni van is a personal vehicle using the same for hire and reward is a violation of the policy conditions entered between the respondent third and fourth and absolving the fourth respondent from paying the compensation. It is also held that there is no coverage for the passengers of Maruthu Omni van. This Court is of the view that since it has been held that only driver of the Eicher van is tort feasor and considering the

violation of the policy conditions of the third respondent is not necessary and even it is found that the third respondent is involved in the violation of the policy condition by using the personal vehicle for hire and reward purpose and the same is not having any bearing in this case, since the liability to pay the compensation is on the first and second respondent herein, accordingly, the award passed by the Tribunal is modified and the second respondent is directed to pay the compensation fixed by the Tribunal within a period of six weeks from the date of receipt of copy of this order and to recover the same from the first respondent owner Eicher van. With regard to the claim petition filed against the third and fourth respondents is dismissed. The claimants entitled to withdraw the award amount by making appropriate application. In other aspects, the judgment and decree of the Tribunal is confirmed.

20.Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

26.09.2023

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Index: Yes/No
Neutral Citation: Yes/No

K. RAJASEKAR, J.
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To
The Motor Accident Claims Tribunal (Sub-Court),
Ranipet,
Vellore District.

C.M.A.Nos.1897 to 1899 of 2014

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