IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2520 of 2014
and M.P.No.1 of 2014

The Divisional Manager,
New India Assurance Company Ltd.,
Thiruvannamalai ... Appellant/3rd Respondent

Vs

1.Seenuvasan
2.Vasantha
3.Sudhakar ... Respondents 1 to 3/Petitioners

4.Chandrasekaran ... 4th Respondent/1st Respondent

5.Murugan ... 5th Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree dated 15.09.2012 made in M.A.C.T.O.P.No.146 of 2008 on the file of the Motor Accident Claims Tribunal, District and Sessions Judge at Thiruvannamalai.

For Appellant ... M/s.P.G.Padmanabhan

For Respondents ... No Appearance for R1 to R5

JUDGEMENT

Aggrieved by the impugned award dated 15.09.2012 passed by the Motor Accident Claims Tribunal, District and Sessions Judge, Thiruvannamalai in M.A.C.T.O.P.No.146 of 2008, the present appeal has been filed by the Appellant/Insurance Company.

2. On 7.11.2007, when the deceased Suresh was travelling as a pillion rider along with the 4th respondent in a Two wheeler bearing Reg.No.TN.25 H 7543 belonging to the 5th respondent near Kariyambadi Koot Road, which was driven by the 4th respondent in a rash and negligent manner and it dashed against the Palmyra Tree as a result of which, the deceased sustained injuries on head, hand, leg, stomach hip and crushed injuries all over his body and died on the spot. In view of the death of the deceased, the dependants of the deceased have filed a claim petition before the Motor Accidents Claims

Tribunal, District Judge, Thiruvannamalai claiming compensation of Rs.10,00,000/- in M.C.O.P.No.146 of 2008. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition and awarded compensation of Rs.6,65,000/- with interest at 7.5% per annum to the claimants and has directed the appellant/insurance company to pay the compensation to the claimants and to recover the same from the owner of the vehicle. Challenging the said order dated 15.09.2012, the Appellant has filed this Appeal.

3. Learned counsel appearing for the Appellant/insurance company denied there liability to compensate the Respondents/Claimants on the ground that, at the time of accident, the driver of the vehicle was not in possession of a valid driving licence which is in violation of policy conditions. Further, the owner of the vehicle has not taken the policy to cover the gratuitous passenger i.e., Pillion rider of the vehicle and the deceased being the pillion rider would not come within the ambit of 'Third party' and hence, the liability cannot be fastened against the Appellant. However, without properly adverting to the

above facts, the Tribunal has erred in ordering pay and recovery fastening liability against the Insurance Company which requires intereference. Accordingly, he prayed for allowing this Appeal.

4. Though notice was served on Respondents 1 to 5 and their name printed in the cause list, none appeared on behalf of the respondents today. Considering the pendency of the Appeal which is of the year 2014, this Court is inclined to dispose of the same based on the materials available on record.

5. The issue arises for consideration in the present appeal is whether the Appellant/Insurance Company is liable for pay and recovery of compensation amount as ordered by the Tribunal. One of the grounds raised by the Insurance Company while denying their liability for pay and recovery is that the driver of the vehicle was not in possession of valid driving licence at the time of accident which is in violation of policy conditions.

6. Insofar as the possession of valid driving license, this Court had

perused the impugned award wherein it is seen that a similar issue has already been dealt with by this Court in CMA(MD).No.745 of 2009 wherein, this Court having relied upon the decision of the Hon'ble Apex Court in case of ***ICICI Lombard General Insurance Company Limited Vs. M.Rakkathal*** reported in ***(2010(1) TN MAC 123),*** has held that the principle of pay and recovery shall be applicable inspite of the fact that the driver of the vehicle was not in possession of a valid driving licence. In the said context, the Apex Court has distinguished the four different scenarios which would arise in case of licence :-

> *(a) Where there was no license,*
> *(b) Whether the license is forged/fake,*
> *(c) Where the license is for different class or vehicle from the offending vehicle and*
> *(d) Where the license is for learner.*

7. Proceeding therefrom, the Apex Court held that the mere non-possession of a valid driving licence cannot be put against the claimant, as the Motor Vehicles Act is a benevolent piece of legislation, which is aimed at circumventing the sufferings that would be faced by a family on account of

loss of its breadwinner. Therefore, the non-possession of valid licence also would not be within the knowledge of the deceased, and what would be relevant consideration is the liability of the insurance company to compensate the claimants on the basis of the terms of the contract. Therefore, from the abovesaid decision, it is amply evident that the insurance company cannot absolve itself of its liability to pay the compensation on the ground of there being no valid licence, but it would be guided by the terms of the contract on the basis of the type of policy taken by the owner of the vehicle.

8. Coming to the type of policy, which covers the vehicle, there is a categorical finding recorded by the Tribunal that the vehicle is covered by a comprehensive policy, which clearly shows that all the passengers, including a pillion rider are covered within the terms of the policy as separate premium is paid to cover the pillion rider as well. In the absence of any contra evidence to show that the policy is not a comprehensive policy, the insurer is liable to compensate the claimants. Therefore, the liability of the insurer to compensate the claimants is liable to be sustained.

9. However, in view of the decision of the Supreme Court in ***National Insurance Company Vs.Swaran Singh (MANU/SC/0021/2004 : (2004) 3 SCC 297),*** where the Supreme Court has held that where there was a subsisting contract of the Insurance covering the risk and there is a violation of certain conditions in the contract of insurance, the insurance company is liable to pay the compensation but is entitled to recover the same from the owner of the vehicle. Importing the ratio laid down in the said decision to the facts of the present case, this Court is of the considered view that there is no perversity either in the finding recorded by the Tribunal or the subsequent order passed by the Tribunal and, therefore, this Court is not inclined to interfere with the same.

10. For the reasons aforesaid, the appeal deserves to be dismissed and, accordingly, this appeal is dismissed. It is open to the Appellant/Insurance Company to recover the amount of compensation awarded by the Tribunal from the 5th respondent/owner of the vehicle in the manner known to law.

11. The Appellant-Insurance Company is directed to deposit the amount of compensation quantified by the Tribunal to the credit of M.A.C.T.O.P.No.146 of 2008 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimants as per the ratio of apportionment ordered, through RTGS within a period of two weeks thereafter. There shall be no order as to costs in this appeal. Consequently, the connected Miscellaneous Petition stands closed.

06.10.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS

To

1.The Motor Accident Claims Tribunal,
District and Sessions Judge,
Thiruvannamalai.

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

M.DHANDAPANI, J

NHS

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