



C.M.A.No.1555 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1555 of 2021

M/s.United India Insurance Co.Ltd.,
(Having Branch Office at No.58,
Purasawalkam High Road, Purasawalkam,
Chennai – 600 007),
Divisional Office No.1, TP HUB,
No.104-A, Ranga Building,
Peramanur Main Road, Near Four Roads,
Peramanur, Salem – 636 007.

... Appellant

Vs.

1. Susila
2. Gunasekaran
3. Balasubramaniam
4. Mohankumar
5. M/s.Tamilnadu Minerals Ltd.,
Having office at (Policy Address No.31,
Kamarajar Salai, TWAD House,
Chepauk Chennai – 600 005),
R.C.Book Address – Rep. by the
Having Branch Office at No.83,
Nehru Nagar, Mettur Dam R.S.,
Salem District – 636 402.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 26.04.2019 made



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in M.C.O.P.No.1675 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Judge (FAC), Salem.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.R.Navaneetha
Krishnan for R1 to R4

Mr.Srijayanthi for R5

JUDGEMENT

This appeal has been filed against the award and decree dated 26.04.2019 made in M.C.O.P.No.1675 of 2016 on the file of the Motor Accidents Claims Tribunal, Special District Judge (FAC), Salem.

2. It is the case of the claimants that on 18.06.2016 at about 11:20 p.m when the deceased was riding his motor cycle bearing registration No.TN 27 Y 4191, the lorry bearing registration No.TN 30 X 5331 coming from the opposite direction driven by its driver in rash and negligent manner hit against the motor cycle and due to the impact, the deceased sustained grievous injuries and died on the way to the hospital. A case in Crime No.172 of 2016 was registered against the driver of the



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lorry by Karumalaikoodal Police. Therefore, the claimants towards loss of earnings on account of the death of the deceased have filed the claim petition claiming compensation for the same.

3. The learned counsel for the appellant / insurance company submits that at the time of accident, the lorry was not having the requisite fitness certificate as mandated under Section 56 of the Motor Vehicles Act, 1988 (in short 'the Act') and in the absence of fitness certificate, the lorry cannot be said to have been validly registered u/s.39 of the Act.

4. It is further submitted by the learned counsel for the appellant that the absence of valid certificate of fitness affects the registration of the vehicle under Section 56 of the Motor Vehicles Act. Under Section 56 of the Act, the vehicle shall not be deemed to be validly registered under Section 39 unless it carries a certificate of fitness in the prescribed form. Undoubtedly, the same relates to the need of a fitness certificate on the date of registration. No doubt the lapse of certificate of fitness would constitute breach of the provisions of Motor Vehicles Act or Rules. However, we cannot find anything under Section 56 which suggests that



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the registration or permit issued would stand cancelled or revoked on account of lapse of period of fitness certificate. Therefore, the insurance company is not liable to pay the compensation. The learned counsel further placed reliance based on the decision of this Court in the case of ***Divisional Manager, United India Insurance Co. Ltd., Vs. S.Sowkath Ali*** and others reported in ***2009 (1) TN MAC 301***.

5. Per contra learned counsel for the claimants submits that the non holding of a valid fitness certificate by the lorry cannot be the basis to negative the claim of the claimants. More particularly, under the Act which is benevolent legislation and it is the duty of the insurer to cover the third party risk in respect of such accident.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials placed on record.

7. Section 56 of the Act mandates the certification of the fitness certificate in respect of transport vehicles and said provision reads as



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hereunder:

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56. Certificate of fitness of transport vehicles. – (1) *Subject to the provisions of section 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder.*

Provided that where the prescribed authority or the “authorized testing station” refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

(2) *The “authorized testing station” referred to in sub-section (1) means a vehicle service station or public or private garage which the State Government, having regard to the experience, training and ability of the operator of such station or garage and the testing equipment and the testing personnel therein, may specify in accordance with the rules made by the*



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Central Government for regulation and control of such station or garages.

(3) Subject to the provisions of sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the object of this Act.

(4) The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained:

[Provided that no such cancellation shall be made by the prescribed authority unless such prescribed authority holds such technical qualification as may be prescribed or where the prescribed authority does not hold such technical qualification on the basis of the report of an officer having such qualification.]

(5) A certificate of fitness issued under this Act shall, while it remains effective, be valid



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throughout India.

8. From the aforesaid provision it is evident that a transport vehicle shall not be deemed to be validly registered for the purpose of Section 29 of the Act unless it carries a certificate of fitness containing such particulars and information as may be prescribed by the Central Government and issued by the authorised testing center. In case the prescribed authority of the authorized testing center refuses the said certificate, the owner of the vehicles shall be supplied with the reasons for such refusal in writing.

9. From the aforesaid provision it is evident that certifying of fitness is mandated requisite in respect of transport vehicles to bring the vehicle within the ambit of validly registered vehicle. In the case on hand there could be no quarrel that the lorry was not possessed of the requisite fitness certificate as mandated u/s.56 of the Act and therefore the said lorry cannot be held to be validly registered for the purposes mentioned u/s.39 of the Act. However, could the absence of holding a valid fitness



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certificate by the lorry be a ground to reject the claim of the claimants for compensation in respect of death of the deceased under the Act. It is to be pointed out that the Act is benevolent legislation which caters to the third party risks. In case of an accident and to offset the loss the insurer is made liable to indemnify the insured. In this regard the decision of the Division Bench of this Court in the case of ***Divisional Manager, United India Insurance Co. Ltd., Vs. S.Sowkath Ali*** and others reported in **2009 (1) TN MAC 301** is relied on by the learned counsel wherein, in an identical scenario the Division Bench had appreciated the materials and had gone on to hold as under:

*“7. In appeal, the learned counsel for the appellant contended that since the vehicle in this case did not have a valid fitness certificate and was allowed to be used by the owner contrary to the terms and conditions of the Insurance Policy, they are not liable to compensate the claimants. There is breach of condition of Policy and on that ground, the owner alone is liable to compensate the claimants. Learned counsel for the claimants, on the other hand relied on the decision of a Division Bench of this Court in ***Velammal and others Vs. P.Kanaga and others***, 2004 (1) TN MAC 75 (DB) :*



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2006 ACJ 1039. In this case, the following two issues were considered by the Division Bench:

1. The vehicle was covered by an insurance policy on the date of accident is not in dispute. But the insurer seeks to avoid its liability on the ground of violation of policy conditions, namely,

(i) The vehicle has no valid fitness Certificate.

(ii) the vehicle was driven by a driver who did not possess the authorisation to drive max cab or the driver was not possessed of a valid licence to drive the max cab.

8. The Division Bench while holding that the Insurance Company is not liable for violation of policy condition, held that the insurer insofar as a claim by third parties is concerned, has to first pay the claimant and proceed against the owner of the vehicle to recover the amount paid by it. The relevant portion reads as follows:

" In the result, we hold that the insurer cannot avoid the liability to answer the claim of the third parties, but the insurer is at liberty to proceed against the owner of the vehicle and recover the amount paid by it after paying the claimants-appellants herein"

9. Following the ratio laid down in the above said Division Bench Judgment, in this case, since the vehicle



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in question did not have a valid fitness Certificate on the date of accident, there is violation of policy condition and the owner will be liable for the breach. The Insurance Company, as far as the third party claim is concerned will at the first instance pay the claimant and recover the same from the owner of the vehicle in accordance with law.”

10. The case on hand is squarely covered by the decision of the Division Bench of this Court in the case of ***Divisional Manager, United India Insurance Co. Ltd., Vs. S.Sowkath Ali*** and others reported in **2009 (1) TN MAC 301**. However, without adhering to the aforesaid ratio, the Tribunal has fastened the liability jointly and severally on the owner as well as the insurer of the vehicle which cannot be sustained. In such a backdrop, the said finding deserves to be modified. Accordingly, while this Court fastens the liability with regard to the payment of compensation on the owner of the vehicle, however, directs the insurance company to pay the compensation awarded by the Tribunal to the claimants and thereafter, recover the same from the owner of the vehicle in accordance with law.



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11. Accordingly, the appeal is allowed in part directing the insurance company to pay a sum of Rs.5,74,000/- to the credit of M.C.O.P.No.1675 of 2016 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 eight (8) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimants through RTGS within a period of two (2) weeks thereafter. However, it is open to the appellant to recover the said amount from the owner of the vehicle in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No

To

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Salem.



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

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M.DHANDAPANI, J.

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