IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2494 of 2019
and
Civil Miscellaneous Petition No.11745 of 2019

National Insurance Company Limited,
Represented by its Divisional Manager,
L.R.N.Building,
Saradha College Road,
Salem – 636 007. ... Appellant / 2nd respondent

Vs.

1. K.Ashraf Ali alias Sowgath Ali ... Respondent/Claimant

2. K.Devandran ... Respondent / 1st respondent
[R2 ex-parte before Tribunal.
Hence notice to R2 dispensed with]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 26.04.2018 made in M.A.C.T.O.P.No.454 of 2011 on the file of the Motor Accidents ClaimsTribunal, Special Sub Court No.2, Salem.

For Appellant	:	Mrs.N.B.Surekha
For R1	:	Mr.V.Vijayakumar
For R2	:	AOS not filed

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award passed in M.C.O.P.No.454 of 2011, dated 26.04.2018 by the Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem, on the ground that liability fasten on the Insurance Company is not proper since it is a case of stolen vehicle, which involved in the accident held on 15.05.2009.

2. The case of the petitioner is that on 15.05.2009 at about 11.30 p.m., while he was riding the Autorickshaw bearing Registration No.TN 30 K 8808 on Hasthampatti Saradha College Main Road, near Sarathy Hotel, at that time a TATA Indica Car came in the opposite direction with rashly and negligent manner, hit on the Autorickshaw, due to which, the auto was capsized and caused accident. The petitioner sustained grievous injuries. Hence, the petitioner filed Claim Petition before the Tribunal, claiming a sum of Rs.7,00,000/- as compensation.

3. Before the Tribunal, the Insurance Company contested the claim that the first respondent is the owner of Tata Indica Car bearing

Registration No.TN 28 H 2473, which was stolen and driven by third party hence the Insurer is not liable to indemnify the first respondent.

4. The Tribunal after considering the evidences placed on record, rejected the contention of the Insurance Company and held that the negligent act of the driver of the stolen vehicle has injured the third party, the insurer is liable to indemnify the first respondent and the claimant is entitled for compensation of Rs.3,07,037/- with interest.

5. The learned counsel for the appellant by relying on the Judgements of this Court passed in ***Selvarajamani and two others vs. New India Assurance Company Ltd., Madurai and Others*** [***2004 (2) TNMAC 21 (Mad) : 2003 (1) CTC 257]*** and in ***A.C.G.Venancious and Another vs. Jagajothi and Others*** [***2008 ACJ 1434],*** contended that if the vehicle is stolen and the same is met with accident, the owner of the vehicle is not liable to pay compensation. Consequently, the Insurance Company need not indemnify the owner of the vehicle.

6. The learned counsel for the claimant has placed reliance on the Judgment of the Delhi High Court in ***United India Insurance Company Ltd., vs. Anita Devi and Others*** reported in ***2022 SCC Online Del 139 : 2022 ACJ 1108*** and contended that in this case, the claimant is a third party, he sustained severe injuries. Since injured is a third party, either owner of the vehicle or the Insurance Company is liable to pay compensation, as per the scheme of the Act.

7. I have considered the submissions of both sides and perused the materials placed on record.

8. In ***Selvarajamani case,*** cited supra, the Division Bench of this Court has considered the point, whether the owner of the motor vehicle and consequently, an insurer can be held liable for the damage suffered by the victim by the negligent use of the vehicle, even in cases, where the negligent case was by a person who had stolen the vehicle and held in paragraph No.6 as follows:

> *" 6. When a vehicle is stolen, it cannot always be said that the owner had been negligent. The ingenuity of the person who committed theft cannot always be foreseen. If as a prudent owner, the owner of the*

vehicle had taken the normal precaution of locking the car while parking it in a public place, the owner cannot be held responsible for the theft of the vehicle. The person who steals the motor vehicle cannot, on the basis of any principle, be described as an agent of the owner, or employee of the owner, for the purposes of casting liability on the owner. The concepts of agency or employment or contract are wholly inapposite in a case of theft. Theft is taking away of the property without the consent expressed or implied of the owner, and with intent to appropriate the property for oneself. None of the established legal principles can be stretched so as to constitute a thief who stole the motor vehicle, a representative of the owner for the purpose of making the owner liable."

9. In ***A.C.G.Venancious*** case, cited supra, the Division Bench of this Court has held that if the owner has not violated any policy condition and he had taken all precautionary measures including informing the insurer about the theft of vehicle, then the insurer cannot deny its liability.

10. In ***United India Insurance Company Ltd., vs. Lehru and Others [2003 (3) SCC 338],*** while interpreting Section 149(2) of the Motor Vehicle Act, 1988, in paragraph No.18, it is observed as follows:

"Now let us consider Section 149(2) of the Motor Vehicle Act. As seen in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia's and Sohan Lal Passi's cases

> *(supra), the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absured results. Just to taken an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained Company disown liability? The answer has to be an emphatic "No". To hold otherwise would be negate the very purpose of compulsory insurance. The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom, has made insurance, at least third party insurance, compulsory. The aim and purpose being that an Insurance Company would be available to pay."*

11. By relying on the Judgment of the Hon'ble Apex Court in ***Lehru's case***, the Division Bench of this Court in ***Sasidharan Nair vs. Ali @ Aliyar [2010 ACJ 1061]***, in paragraph No.8, as follows:

> *"8. Relying on the dictum laid in the decisions of the Hon'ble Supreme Court cited above, and considering the provisions contained in Section 149(2) it is clear that in order to avoid liability for payment of the amounts due to a third party who sustained injury in a vehicle which is properly insured, in view of 149(2)(a)(ii) the insurer should prove that there is a "breach" on the part of the insured. The theft of the vehicle and the unauthorised use by the person who had stolen the vehicle cannot be termed as a breach committed by the insured. Therefore the insurer cannot be exonerated from the liability to satisfy the award in*

favour of a third person."

12. This Court in ***Reliance General Insurance Co., Ltd., vs. Papathi and two others, C.M.A.No.1269 of 2019, dated 18.03.2019*** has considered the similar line and by following the Division Bench Judgment of this Court and Kerala High Court has held that in Paragraph No.10, that, the Insurance Company cannot be exonerated from its liability on the ground that the vehicle was stolen, when the insurance policy was in force at the time of accident and unauthorized use by the person who had stolen the vehicle cannot be termed as a breach committed by the owner of the vehicle and hence, Insurance Company is liable to pay compensation.

13. In this case in hand, before the Tribunal, the claimant has proved that the driver of vehicle, who has changed the number plate and eyed the stolen vehicle and caused accident, which caused injuries to him. Before the Tribunal, P.W.5, the Special Assistant Inspector of Police in Traffic Division Police Station has stated that, the car bearing Registration No.TN 28 H 2473, TATA Indica Car was involved in the accident. He has also stated that, immediately after the vehicle was stolen and theft case was registered on the file of Namakkal Police Station.

14. In this case, the owner of the car-first respondent, has not contested the Claim Petition, however, by examining the R.T.O officials and police officer as P.W.3 to P.W.5, the claimant has proved that, immediately after the theft of vehicle, the owner of vehicle lodged police complaint and he has not committed any breach as contemplated under Section 149 of the Motor Vehicle Act. As observed by the Hon'ble Apex Court in ***Lehru's case,*** cited above, the injured has not committed any breach and he is an innocent sufferer. Since third party is injured in this case, this Court is of the view that, the award of the Tribunal requires no interference of this Court.

15. The next ground urged by the learned counsel for the Insurance Company is relating to quantum of compensation awarded under various heads to the claimant. The Tribunal is awarded compensation on the following heads:

For Permanent Disability a sum of Rs.90,000/-; For Pain and Sufferings a sum of Rs.10,000/-; For loss of amenities a sum of Rs.10,000/-; For Medical Expenses a sum of Rs.1,17,037/-; For Future Medical Expenses a sum of Rs.50,000/-; For loss of income during treatment period a sum of

Rs.19,500/-; For Transportation Charges a sum of Rs.5,000/-; For Nutrition charges a sum of Rs.7,500/-; For Attender charges a sum of Rs.7,500/- and for Damages to clothes a sum of Rs.500/- and totally a sum of Rs.3,17,037/- was awarded as compensation to the claimant.

16. The grievance of the Insurance Company is award of future medical expenses for a sum of Rs.50,000/-. In this case, the injured has sustained the following injuries

> *"1. Polytrauma with acetabulum fracture subluxation right hip with cimminuted fracture shaft of femur right with left tibial spine fracture avulsion with laceration left knee and*
> *2. Dislocation right wrist."*

17. The first injury which has been sustained by the injured on his right hip, which has been communited a fracture on the shaft of femur right with left Trivial fine fracture. The Discharge Summary shows that the treatment was given to the injured from 16.05.2009 to 19.05.2009 is as follows:

> *"On 16.05.2009, Patient underwent closed interlocking nailing right femur for comminuted # shaft of femur right. Closed reduction right wrist for*

dislocation # right wrist and wound debridement and PSS for left knee lacerations under CSE. On 19.05.2009, Patient underwent open reduction and internal fixation with recon plate under SA for irreducible Posterior dislocation with posterior wall # and Volar Barton's # right wrist."

18. It shows that the injured requires further treatment and considering the same, the Tribunal has rightly awarded a sum of Rs.50,000/- for future medical expenses and this Court finds no warrants interference to modify the quantum awarded. Accordingly, the Civil Miscellaneous Appeal filed by the Insurance Company is liable to be dismissed.

19. In the result, the Civil Miscellaneous Appeal is dismissed. The Award and Decree passed by the Tribunal in M.A.C.T.O.P.No.454 of 2011, dated 26.04.2018 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem, is hereby confirmed. The appellant-Insurance Company is directed to deposit the compensation amount awarded by the Tribunal along with interest and costs, less the amount alredy deposited, if any, within a period of six weeks from the date of receipt of a copy of this Judgment to the credit of M.C.O.P.No.454 of 2011, on the file

of the Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem. On such deposit, the claimant is permitted to withdraw the awarded amount with proportionate interest and costs, less the amount if any, already withdrawn. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

13.07.2023

ssi
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Special Subordinate Judge No.2,
   Motor Accidents Claims Tribunal,
   Salem.

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

K.RAJASEKAR,J.

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C.M.A.No.2494 of 2019

13.07.2023