BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.08.2023

Pronounced On : 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.168 of 2018
and
C.M.P(MD)No.2530 of 2018

M/s.United India Insurance Co.Ltd.,
Represented through its Divisional Manager,
Having its Divisional Office,
No.7-A, West Veli Street,
Madurai. : Appellant /2nd Respondent

Vs.

1.Pandi : 1st Respondent/Petitioner

2.V.Murugapandi : 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 18.07.2014 passed in M.C.O.P.No.1287 of 2009 on the file of the Motor Accident Claims Tribunal/III Additional Sub Court, Madurai.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.B.Anandan, for R2.

: No Appearance for R1.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1287 of 2009 on the file of the Motor Accident Claims Tribunal/III Additional Sub Court, Madurai.

2. The appellant/insurer, who was made liable to pay compensation of Rs.51,000/- with interest at 7.5% per annum to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 09.05.2009, challenged the liability mulcted on it.

3. The main contention of the appellant/insurer is that the two wheeler rider was not possessing valid driving license at the time of accident and that despite proving the said factum, the Tribunal erred in mulcting liability on the appellant/insurer.

4. The only point that arises for consideration is that as to whether the Tribunal erred in mulcting entire liability on the appellant/insurer, despite showing that the two wheeler rider was not possessing valid driving license at the time of accident ?

5. The appellant/insurer in order to prove their defence has summoned and examined the staff attached to the Motor Vehicle Inspector Grade-I, Unit Office, Thirumangalam as R.W.1 and its own official Mr.Arumugam, Executive Officer as R.W.2.

6. R.W.1 in his evidence would say that the two wheeler rider Pitchai has not taken any driving license from their Office till 09.05.2009 and he has produced the letter sent by the Motor Vehicle Inspector, Grade-I, Unit Office, Thirumangalam as Ex.R.1, whereunder it has been specifically stated that on verification of their office records, they came to know that driving license has not been issued in favour of Thiru.Pitchai, S/o.Palchamy and has no valid driving license as on 09.05.2009. No doubt, in cross examination, R.W.1 would say that in case, if the two wheeler rider had obtained license from any other Regional Transport Office, the same does not find place in their office records.

7. As rightly contended by the learned counsel for the appellant, the Tribunal mainly relying on the above evidence of R.W.1, has come to a decision that the insurer has failed to prove that the two wheeler rider was not possessing driving license at the time of accident. At this juncture, it is necessary to refer the judgment of this Court in ***Oriental Insurance Company Limited, Thanjavur Vs. G.Ramasamy and another*** reported in ***2000 3 L.W. 613***,

> " *In the present case, the Insurance Company has taken pains to produce licence of the driver who is alleged to have driven the vehicle (motor cycle) and also examined an officer from the Regional Transport Office. The said witness has also deposed that there is no endorsement or issuance of any licence in favour of the driver. "Having regard to the facts and circumstances of this case, the Insurance Company having produced licence which does not disclose the required endorsement, I ar? inclined to hold that the Insurance Company had discharged its burden. It is impossible and unrealistic to expect anything more to be done by the Insurance Company. To expect the Insurance Company to verify from all the Regional Transport Offices throughout the State or the country in order to establish that the driver had no licence, would be an impossible and impractical expectation. It should be remembered that the Insurance companies are public institutions and imposition of*

any unreasonable burden of proof would only result in the claimants and the owner of the vehicles colluding together and placing the Insurance Company in a very impossible situation. Such a situation cannot at all be appreciated. It has to borne in mind that under normal circumstances, it is for the person who claims to have a valid licence to produce the same. Motor Vehicles Act imposes a duty on the Insurance company to furnish sufficient material to show that the driver has no proper licence, which burden would be discharged either by producing a licence which does not contain any endorsement to drive a particular type of vehicle, or a report or an official witness from the local Regional Traffic Office. Therefore, I am unable to agree with the findings of the Tribunal. In the result, the appeal is allowed and the Insurance Company is absolved of its liability. The claimant is entitled to proceed against the owner of the vehicle for the compensation."

8. In the case on hand, as already pointed out, the insurer has summoned and examined an official from the Motor Vehicle Inspector's Office. As rightly observed by the learned Judge of this Court, the insurer cannot be expected to verify from all the Regional Transport Office throughout the State or the Country to prove that the driver had no license.

9. The learned counsel for the appellant would submit that the insurer has sent notice to the second respondent/first respondent, owner of the vehicle calling upon him to produce the valid driving license of his driver Pitchai and having received the said notice, the owner has neither sent any reply nor produced the driving license of his driver and that the second respondent/first respondent had remained ex-parte before the Tribunal.

10. R.W.2/Official of the insurer in his evidence would reiterate the above contentions and exhibited the copy of notice sent to the owner, postal receipt and the postal acknowledgement under Ex.R3 to Ex.R5.

11. The learned counsel for the appellant has relied on the judgment of the Division Bench of this Court in ***National Insurance Company Limited Bhavani Vs.Samiyathal and others*** reported in ***(2003) 1 MLJ 319*** and the relevant passages are extracted hereunder :

> *"6. ... In support of their plea, the Insurance company has examined one Benchamin, an officer working in the Regional Office as R.W.1. He deposed before the Court that the lorry belonged to the second respondent/6th respondent herein.*
>
> ......

According to him, their company had sent a notice-Ex.R-2 on 12-01-1995 to the driver-Kandasamy to produce his driving licence. Ex.R-2 was returned unserved, and the returned cover has been marked as Ex.R-3. The insurance company had also sent a similar notice dated 29-5-1995 to the owner of the lorry-Chinnasamy informing him about the non-production of driving licence by the driver and the violation of Motor Vehicles Act and policy conditions, and the same has been marked as Ex.R-4. Since the owner refused to receive the registered notice, the same was returned and the returned cover has been marked as Ex.R-5. It is true that R.W.1 has admitted that the Insurance company had not taken steps to ascertain from the Regional Transport Office, whether the lorry driver was issued with a driving licence to drive vehicle like lorry. Here, we have to note that after taking the stand in the counter statement that the driver was not possessed with a valid driving licence to drive a lorry, the insurance company has sent registered legal notices to the driver as well as the owner of the lorry. It is also brought to our notice that both the notices were returned un-served. As a matter of fact, the verification of the cover addressed to the owner, shows that he refused to receive the same. These materials would show that the insurance company had taken necessary steps to ascertain the fact whether the driver was having a valid driving licence or not? It is not either clear or explained as to why the driver and the owner did not respond to the notice issued by the insurance company. Likewise, they could have appeared before the Tribunal and informed their stand.

*However, before this Court, the owner of the lorry is represented by a counsel. Even before us, there is no explanation or information regarding the stand taken by the insurance company, namely, whether the driver was having a valid licence at the time of the accident to drive a lorry. In such a circumstance, as rightly contended by the learned counsel for the appellant/insurance company, though the appellant had discharged the initial responsibility in proving the fact that the driver of the vehicle had no valid driving licence, the said fact had not been discharged either by the claimants or by the owner of the vehicle. However, as observed by the Hon'ble Supreme Court in **NEW INDIA ASSURANCE CO. LTD., v. KAMLA**, reported in **2001 ACJ 843**, the insurance company is liable to pay to the third parties irrespective of the fact that there has been any breach of violation of the policy conditions. In the event that there is a breach/violation of the policy conditions, the insurance company can recover from the insured the amount so paid to the third parties, if as per the policy conditions, the insurer had no liability to pay such sum."*

12. The above decisions are squarely applicable to the case on hand. In the present case also, as already pointed out, the insurer has sent notice to the owner of the vehicle, directing him to produce the driving license and despite the receipt of the same, he has neither chosen to produce the same nor contested the case before the Tribunal.

13. It is pertinent to note that the second respondent/first respondent-owner having received the notice from this Court, has engaged a counsel to appear on his behalf, but even then, he has not chosen to show that his driver was having valid driving license at the time of accident. Moreover, when the matter was taken up for final hearing, there was no representation for the second respondent/owner.

14.Considering the evidence of R.W.1 and R.W.2 and the documents produced under Ex.R.1, Ex.R.3 and Ex.R.5, as rightly contended by the learned counsel for the appellant, the appellant had discharged their initial burden of proving the fact that the two wheeler rider had no valid driving license at the time of accident and even thereafter, neither the claimant nor the owner had attempted to prove that the two wheeler rider was having license at the time of accident.

15. In ***National Insurance Company Limited's*** case referred above, the Division Bench of this Court relying on the decision of the Hon'ble Supreme Court in ***New India Assurance Company Limited Vs. Kamala*** reported in ***2001 A.C.J.843***, has specifically held that the Insurance

Company is liable to pay compensation to the claimant and on account of violation/breach of terms of insurance policy, the insurer is entitled to recover the same form the insured.

16. This Court in ***Reliance General Insurance Co.Ltd***, ***Vs. Esakkimuthu*** reported in ***2021(1) TNMAC 390*** [C.M.A(MD) No.621 of 2015], dated 22.12.2020, has held that the offending vehicle's driver had license to drive the LMV and HTV, but he had no license to drive the two wheelers on the date of accident, applied the doctrine of pay and recovery and directed the insurance company to pay the award amount to the claimant and then to recover the same from the owner of the vehicle and the relevant passage is extracted hereunder :

"*14.The next main contention of the Appellant is that the second respondent/first respondent had no valid driving license on the date of accident and that since there is violation of main policy condition, the Insurance Company is no way responsible for the claim. No doubt the Appellant has summoned and examined the staff attached to the Regional Transport Officer, Triunelveli and through him proved the fact that the second respondent had license to drive the LMV and HTV, but he had no license to drive the two wheelers on the date of accident. Considering the above, the trial Court, by relying on the decision of our Madras High Court reported in* ***2013 (1) TN MAC 146***

***[United India Insurance Company Vs.Giri Prasath,** has rightly applied the doctrine of pay and recovery and directed the Appellant/Insurance Company to pay the claim amount to the claimant and then to recover the same from the owner of the vehicle.*"

17. The Tribunal, as rightly contended by the learned counsel for the appellant, without considering the legal position in proper perspective, has mulcted the entire liability on the appellant/insurer. Hence, this Court has no hesitation to hold that the finding of the Tribunal in mulcting liability on the appellant/insurer is not proper and the same is liable to be set aside.

18. It is pertinent to note that the appellant/insurer has not challenged the quantum of compensation awarded at by the Tribunal. Considering the other facts and circumstances of the case, this Court, further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

19. In view of the above, the award passed by the Motor Accident Claims Tribunal/III Additional Sub Court, Madurai, dated 18.07.2014 in M.C.O.P.No.1287 of 2009, is modified to the effect that the appellant/insurer shall pay the award amount at the first instance and

thereafter, recover the same from the second respondent/owner of the vehicle and that the quantum and the interest awarded at by the Tribunal are confirmed.

20. Accordingly, the Civil Miscellaneous Appeal is allowed to the extent stated above. Parties are directed to bear their own costs. Consequently, connected Miscellaneous petition is closed.

29.09.2023

NCC : Yes/No
Index : Yes/ No
Internet : Yes/ No
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To

1.The Motor Accident Claims Tribunal/
III Additional Sub Court, Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.168 of 2018
and
C.M.P(MD)No.2530 of 2018

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