



CMA(MD).No.887 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.03.2023

PRONOUNCED ON : 13.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.887 of 2015
and M.P(MD).No.4 of 2015

The Branch Manager
National Insurance Company Limited
Palayamkottai
Tirunelveli District

... Appellant

VS.

1.M.Selvam
2.M.Jeyamani
3.Asaithambi
4.Rani
5.Rajakani
6.Sathurappan
7. Karuthammal

....Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgement and decree passed by the Motor Accident Claims Tribunal, Additional District & Sessions



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Judge, Theni-Periyakulam in MCOP.No.44 of 2012 dated 31.01.2014.

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For Appellant : Mr.D.Sivaraman

For R1 to R5 &
R7 : No appearance

For R6 : Mr.P.Vinoth
For Mr.R.Subramanian

J U D G M E N T

The present appeal has been filed by the Insurance Company challenging an award passed by the Motor Accident Claims Tribunal, Theni at Periyakulam in MCOP.No.44 of 2012.

2.According to the claimants, one Meenachiammal along with her son who is the 5th claimant were walking on the road, a motor cycle driven by the first respondent in a rash and negligent manner had dashed against the deceased Meenachiammal who succumbed to the injuries.

3.According to the claimants, the accident has taken place only due to the rash and negligent driving of the first respondent. An F.I.R was lodged by the 5th claimant in Crime No.72 of 2011 on the file of the Kandamanur Police Station. According to the claimants, the deceased was a vegetable vendor and she was earning a sum of Rs.3,000/- from the



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said business and she was a hale and healthy lady. The vehicle belonging to the first respondent was insured with the second respondent and the claimants are the sons and daughters of the deceased Meenachiammal. Hence, he prayed for a compensation of Rs.2,00,000/-

4.The first respondent namely the owner of the mother bike had remained exparte and the second respondent Insurance Company had filed a counter disputing the manner of accident and contended that the deceased was negligent because she crossed the road suddenly without giving any signal to the vehicles. The respondent further contended that the bike rider was not having a valid driving licence and hence, there is violation of the policy condition and the Insurance Company is not liable to pay any compensation. The respondent had also disputed the quantum of compensation.

5.The Tribunal after considering the oral and documentary evidence filed on either side, arrived at a finding that Meenachiammal died only due to the dashing of the motor bike. The Tribunal further found that no oral or documentary evidence have been placed on the side of the Insurance Company to prove that the deceased was negligent while crossing the road. The Tribunal further found that the accident has



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happened only due to the rash and negligent driving on the part of the bike driver which is owned by the first respondent.

6.The Tribunal further found that the motor bike was having a live insurance policy on the date of the accident. The bike driver was only having a Learner's Driving Licence on the date of accident. As per Exhibit R1, after the accident, the bike driver has obtained a regular permanent driving licence on 14.07.2011. The Tribunal is of the view that holding of the learner's licence is also an effective driving licence which was valid for a period between 05.04.2011 to 04.10.2011 and the accident has happened on 12.06.2011. Since the L.L.R was live on the date of the accident, the Tribunal proceeded to impose the liability on the Insurance Company. Thereafter, the Tribunal has proceeded to fix the quantum at Rs.2,05,000/-. Challenging the said award, the present appeal has been filed by the Insurance Company.

7.The learned counsel for the Insurance Company had raised the following contentions:

(i). The bike driver was holding only a Learner's Driving licence on the date of accident.

(ii).He has obtained a permanent driving licence only on



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14.07.2011 after the date of accident. Therefore, a learner's driving licence cannot be considered to be an effective and a valid driving licence, unless the bike driver is accompanied by a trainer and the 'L Board' is displayed on the front and rear side of the bike.

(iii). The appellant has referred to Section 3 of the Motor Vehicles Act to contend that the Learner's licence is always subject to the conditions that are prescribed by the Central Government. He relied upon Rule 3 of the Central Motor Vehicle Rules to impress upon the Court that the learners should always be accompanied by an instructor who is holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle. He had further contended that as per the said Rule, front and rear side of the vehicle should be painted with the letter 'L'.

(iv). The learned counsel for the appellant also relied upon Rule 15 to contend that only after holding a learners licence for a period of 30 days, the said licensee has to undertake driving test in which he is expected to clear at least 25 types of tests so as to get an effective regular driving licence.

(v). The learned counsel for the appellant had further contended



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that in the deposition, the rider of the bike, who was examined as RW1 has clearly admitted that he was not accompanied by any trainer at the time of accident and there is no proof whatsoever whether there was an 'L Board' in the front and rear side of the vehicle at the time of accident.

(vi.)The learned counsel for the appellant had relied upon the judgement of the Hon'ble Supreme Court reported *in (1996) 2 SCC 328 (New India Assurance Co.,Ltd., Vs. Mandar Madhav Tambe and others)* to contend that a learners licence could not considered to be an effective licence unless the condition prescribed under Rule 3 of the Central Motor Vehicle Rules are strictly followed. He had further relied upon the Judgement of our High Court *in CMA.No.2025 of 2017 dated 26.02.2018 (Vijayakumar Vs. Ulaganathan and another)* to drive home the same point. According to the learned counsel for the appellant, since the driver of the bike was holding only a learner's driving licence and he was not accompanied by a trainer at the time of accident, there is a clear breach of policy condition. Therefore, the Tribunal was not right in fixing the liability upon the Insurance Company and the Tribunal should have ordered pay and recovery.



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8.Per contra, the learned counsel for the respondent/owner had contended that the driver of the motor bike was having a learner's driving licence at the time of accident. The said licence cannot be construed to be an ineffective licence so as to attract the breach of policy condition. It is not the case of the Insurance Company that the driver of the bike was disqualified in any manner from holding a permanent driving licence. Even the policy empowers driving of the vehicle using a learner's licence. Even assuming that the trainer had not accompanied at the time of driving of vehicle, it can only to be construed to be a minor breach of the licence condition which is inconsequential and it does not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

9.The learned counsel for the respondent had relied upon the judgement of the Hon'ble Supreme Court *in (2004) 3 SCC 297 (National Insurance Co.,Ltd., Vs. Swaran Singh and others)*. In the said judgement, the learned counsel relied upon Paragraph No.110 (vi) and (vii) to contend that only when the alleged breach is fundamental in nature and the said breach was found to have contributed to the cause



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of the accident then only the Insurance Company will get exonerated. He had further contended that if the vehicle was driven by a person having learner's licence, the Insurance Company would be liable to satisfy the award.

10.The learned counsel for the respondent further relied upon the Division Bench Judgement of Kerala High Court *in MACA No.834 of 2006 dated 30.06.2011 (The Oriental Insurance Co.,Ltd., Vs. Abdul Kareem, Aligar Manzil and others)* to contend that unless the driver of the vehicle was found to be disqualified to get a regular licence, minor breach of the policy condition would never be considered to be violation of policy condition that would result in exonerating the Insurance Company. Therefore, he prayed for sustaining the award passed by the Tribunal as against the Insurance Company.

11.I have considered the submissions made on either side and perused the judgements cited by both the parties.

12.The present appeal has been filed by the Insurance Company primarily challenging the liability of the Insurance Company on the ground that the driver of the offending vehicle was only holding learner's licence at the time of accident.



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13.The appellant/ Insurance Company had raised various grounds and the learned counsel also made submissions challenging the negligence on the part of the bike driver. However, a perusal of the records will clearly indicate that the deceased was crossing the road and the motor bike driven by the first respondent in a rash and negligent manner, had hit against the deceased and she had passed away. Though there was a plea on the side of the Insurance Company that there was negligence on the part of the deceased, no oral or documentary evidence has been let in contradicting the same. Therefore, this Court is not in a position to consider the said submissions relating to the negligence on the part of the deceased.

14.Similarly as far as the quantum is concerned, a sum of Rs.2,05,000/- has been awarded by the Tribunal for the death of Meenachiammal who was a vegetable vendor. The claimants are the children of the deceased. The monthly income of the deceased has been taken as Rs.3000/-,. This Court does not find any reason to interfere in the quantum arrived at by the Tribunal.



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15.As far as the plea of liability is concerned, it is the specific case of the learned counsel for the appellant that the learner's licence could be considered to be an effective driving licence only when the following the conditions are satisfied as per Rule 3 of the Central Motor Vehicles Rules.

(i). The person holding learner's licence should be accompanied by any instructor holding an effective driving licence and such instructor should be in a position to control or stop the vehicle.

(ii). The vehicle in question should be painted both in the front and rear side with letter 'L'

(iii).At the time of receiving instruction or gaining experience in driving, no third party should be carried in the said motor cycle.

16.According to the learned counsel for the appellant, unless all the three conditions are satisfied, the learners licence would not be considered to be an effective driving licence so as to indemnify the owners of the vehicle. Any violation of Rule 3 of Central Motor Vehicles Rules will be a clear breach of policy condition not only a policy condition but also the statutory violation which would clearly exonerate the Insurance Company.



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17.A perusal of deposition of RW1/ driver of the bike will clearly indicate that he was not accompanied by any trainer at the time of accident. Therefore, it is clear that the first respondent was driving a motor bike with a learner's licence without being accompanied by an instructor. The Hon'ble Supreme Court in a judgement reported ***in (1996) 2 SCC 328 (New India Assurance Co.,Ltd., Vs. Mandar Madhav Tambe and others)*** in Paragraph Nos. 14 & 15 have held as follows:

“14.From the aforesaid it is clear that what was obtained by respondent No.3 from the authorities under the Act was not a licence within the meaning of [Section 2\(5A\)](#) of the said Act. He had obtained a learner's licence allowed him to be on the road subject to his fulfilling the conditions contained therein. One of the important conditions was that if he was driving a motor vehicle then there must be besides him in the vehicle as an instructor a person duly licenced to drive the vehicle and sitting insuch a position as to be able readily to stop the vehicle.” It is clear from this that two learners by themselves cannot be in one car which is which is being driven by one of them. If the learner having a learner's licence under the rules is to drive a car then he must have sitting besides in a person who is duly licenced. This clearly shows that a "driving licence" as defined in the Act is different from a learner's licence issued under Rule 96. In other words, a person would be regarded as being duly licenced only if



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19.The learned counsel for the respondent had relied upon a judgement reported in *(2004) 3 SCC 297 (National Insurance Co.,Ltd., Vs. Swaran Singh and others)* to contend that if the vehicle at the time of accident was driven by a person having learner's licence, the insurance company would be liable to satisfy the decree. In the said judgement, no issue was raised with regard to other conditions that are required to be satisfied by a person holding a learner's licence. Mere holding of learner's licence without satisfying the statutory provisions under Rule 3 of Central Motor Vehicles Rules could never be considered to be an effective driving licence. The driving of the vehicle by the learner's licence holder without being accompanied the instructor could never be considered to be a minor breach. This learner's licence is being granted for a period of 6 months only to get trained in the driving and thereafter, he should pass the driving test so as to get an effective driving licence. Therefore, the learner's licence could never be considered to be on par with the effective driving licence. Section 3 of the Motor vehicles Act clearly distinguishes the regular driving licence from a learner's driving licence by stating that the driver holding learner's licence should satisfy the Central Motor Vehicles Rules. Therefore, it is clear that non



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accompaniment of the trainer/instructor while driving the vehicle holding learner's licence can never be considered to be a minor breach, but it is fundamental breach of policy condition.

20.The Insurance Company has not pointed out their policy conditions to exonerate themselves, but they have pointed out Section 3 of the Motor Vehicles Act and Rule 3 of the Central Motor Vehicles Rules to support their cases of the breach of policy condition. Therefore, it is not a case of mere violation of policy condition but a case of violation of statutory provisions. Hence, the contentions of the learned counsel for the respondent that it is only a minor breach and not a fundamental breach is not legally sustainable.

21.In view of the above said discussions, it is clear that there is fundamental breach of policy condition and violation of statutory provisions and therefore, the Tribunal was not right in holding the Insurance Company is liable without ordering pay and recovery.

22.In view of the above said facts, the quantum of award passed by the Tribunal is hereby confirmed. As far as the liability is concerned, the



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award of the Tribunal is modified to the effect that the appellant/Insurance Company shall satisfy the award and thereafter, they are entitled to recover the same from the respondent/owner of the vehicle by filing Execution Proceedings in MCOP.No.44 of 2012 on the file of the Motor Accident Claims Tribunal, Theni at Periyakulam.

23. Accordingly, the Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

13.04.2023

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

1. The Motor Accident Claims Tribunal,
Additional District & Sessions Judge,
Theni-Periyakulam

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

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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.887 of 2015
and M.P(MD).No.4 of 2015

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