BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.09.2023

Pronounced on : 11.10.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.880 of 2017
and
C.M.P.(MD)No.9429 of 2017

The Branch Manager,
National Insurance Co. Ltd.,
Trichy. ... Appellant/ Respondent No.3

Vs.

1. Kannabiran ... Respondent/ Petitioner

2. Pavithran

3. Muthu ... Respondents/ Respondents 1&2

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 05.03.2015 made in M.C.O.P.No.75 of 2012 on the file of the Motor Accident Claims Tribunal (Addl. Sub Court), Dindigul and allow this appeal.

For Appellant	: Mr.S.Srinivasa Raghavan
For R1	: Mr.R.Karunanithi
For R2 & R3	: No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.75 of 2012 dated 05.03.2015 on the file of the Motor Accident Claims Tribunal/Additional Subordinate Court, Dindigul.

2. The appellant/insurer, who was made liable to pay compensation of Rs.1,38,000/- (Rupees One Lakh and Thirty Eight Thousand only) with interest at 7.5% per annum to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 10.12.2011, challenged the liability mulcted on it.

For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. The case of the claimant is that on 10.12.2011 at about 02.15 p.m., when the claimant was standing in Idayakottai to Ottanchatram

main road, near Chinnakulipatti bus stop for taking bus to go to Ottanchatram, a lorry bearing Registration No.TSG-7386, which came from North in a rash and negligent manner, dashed against the claimant and as a result of which, the claimant sustained fracture on his left leg and multiple injuries all over his body, that the claimant was immediately taken to Ottanchatram C.F. Hospital and that the accident was occurred only due to the rash and negligent driving of the lorry driver.

4. It is the further case of the claimant that the claimant had taken inpatient treatment in Ottanchatram C.F. Hospital for the period between 10.12.2011 and 15.12.2011, that the claimant has suffered permanent disability and is unable to do any work as before and that the claimant was a drums player and was earning Rs.10,000/- per month.

5. The defence of the third respondent is that the lorry driver has driven the vehicle slowly and carefully by observing traffic rules, that the claimant has suddenly tried to cross the road on North – South main road and voluntarily met with the accident, that the accident was occurred only due to the negligence on the part of the claimant and the lorry driver was

not at fault, that the lorry driver was not possessing valid driving licence at the time of accident and that therefore, the third respondent is not liable for the claim.

6. During trial, the claimant has examined himself as P.W.1 and one Dr.R.Vijayakumaran as P.W.2 and exhibited 5 documents as Ex.P.1 to Ex.P.5. The third respondent has examined 3 witnesses as R.W.1 to R.W.3 and exhibited 5 documents as Ex.R.1 to Ex.R.5 and 2 witness documents as Ex.X.1 and Ex.X.2.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award dated 05.03.2015, by holding that the accident was occurred only due to the rash and negligent driving of the lorry driver, mulcted liability on the third respondent and directed them to pay compensation of Rs.1,38,000/- with interest and costs. Aggrieved by the impugned award, the insurer has preferred the present appeal.

8. The learned counsel appearing for the third respondent would submit that the driver of the vehicle was not possessed valid driving

licence at the time of accident and the third respondent has proved the same beyond reasonable doubts and that since the third respondent has discharged their burden of proof, the finding of the Tribunal fastening liability on the third respondent is untenable. He would further submit that the second respondent/owner of the vehicle died during the pendency of the claim petition and since the claimant has not taken any steps to implead the legal representatives of the deceased second respondent, the claim petition as against the second respondent was dismissed as abated and therefore, there can be no liability on the part of the third respondent being the insurer to indemnify the deceased insured, that there should be a finding that the owner of the vehicle is vicariously liable and on such finding, the insurer should be called upon to indemnify the owner and in case of death of the owner of the vehicle, there can be no liability for the insurer to indemnify the insured and that therefore, the Tribunal ought to have dismissed the claim petition as against the insurer also.

9. The learned counsel appearing for the third respondent would further submit that the Tribunal's finding that the driver and the insurer of the offending vehicle are jointly and severally liable to pay compensation is also untenable and the same is liable to be set aside.

10. The points that arise for consideration are :

1) *Whether the Tribunal erred in mulcting liability on the third respondent, despite showing that the claim petition as against the owner of the vehicle was ordered to be dismissed as abated and that therefore, the question of indemnifying the insured by the insurer does not arise at all?*
2) *Whether the Tribunal erred in fastening the liability on the third respondent, despite proving that the lorry driver was not possessing valid driving licence to drive the offending vehicle at the time of accident?*
3) *Whether the impugned award dated 05.03.2015 passed in M.C.O.P.No.75 of 2012 is liable to be interfered with?*

Point Nos.1 to 3:

11. It is pertinent to note that the third respondent has not disputed the finding of the Tribunal that the accident was occurred due to the rash and negligent driving of the lorry driver, but the third respondent has disputed their liability on two grounds, the first one is that since the claim petition was dismissed as against the owner of the vehicle as abated, the question of directing the insurer to indemnify the deceased insured does not arise at all and the second one is that the lorry driver was not possessing valid driving licence to drive the offending vehicle at the time of accident.

12. It is not in dispute that Chitra Roadways lorry bearing Registration No.TSG-7386 was owned by the second respondent Muthu and that the offending vehicle was driven by the first respondent Pavithran at the time of accident. It is also not in dispute that the said vehicle was insured with the third respondent and the policy was in force on the date of accident.

13. Admittedly, during the pendency of the claim petition before the Tribunal, the second respondent/owner of the vehicle died. Since the claimant has not taken any steps to implead the legal representatives of the deceased second respondent, the Tribunal has passed an order dismissing the claim petition as against the second respondent as abated.

14. At this juncture, it is necessary to refer the decision of the Punjab and Haryana High Court in ***Natha Singh Vs. Gurdial Singh and others*** reported in ***AIR 1982 Punjab and Haryana 38***, wherein, after the death of the owner of the vehicle, an application for bringing his legal representatives on record was made, but the same was ordered to be dismissed and in that scenario, the High Court, by referring to its earlier

decision in ***New India Assurance Company Ltd., New Delhi Vs. Norati Devi*** reported in ***AIR 1978 Punj & Har 113,*** has held as follows:-

> *"3. Section 96 of the Act provides for the duty of the insures to satisfy judgments against persons insured in respect of third party risks. It also provides that the insurance company or the insurer to whom the notice of the bringing of any such proceedings is given, shall be entitled to be made a party thereto and to defend the action on any of the grounds given therein. Section 102 of the Act provides,-*
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> *"Notwithstanding anything contained in Section 306 of the Indian Succession Act, 1925 (XXXIX of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer."*
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> *In view of these provisions of the Act, it cannot be said that the insurance company is not liable to satisfy the claim for 7 Mac App No. 57/2021 a/w connected matters. compensation to be awarded in the claim application*

simply because the legal representatives of Amrit Lal Gupta insured who died during the pendency of the proceedings, were not brought on the record. It is particularly so because in the insurance policy, Exhibit R-11, it has been provided inter alia vide Cl. (4) of Section II, thereof that the company may, on its own option, undertake the defence of proceedings in any Court of law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under that section. It was because of this term of the policy that the insurance company took a specific plea in paragraph 3 of their additional grounds that it had taken over the defence of the claim petition in the name of the insured to contest the claim, as they had reserved the right under the policy of insurance. As observed earlier, this claim was accepted by the Tribunal and on that account, it was allowed to cross-examine the witnesses, on merits, as well. Under the circumstances, the ratio of the decision in Norati Devi's case, (AIR 1978 Punj. & Har 113) (supra), is most relevant. It has been held therein (at p. 114):-

> *"Section 96 only clarifies that if an award is made, it would be the duty of the insurance company to meet the claim. It nowhere lays down that if the insurance company is allowed to contest the liability in*

the absence of the insurer, it should not be held liable. Therefore, it cannot be contended that an insurance company can never be held liable so long as the insured is not impleaded as a party to the proceedings, or having been impleaded his name is ordered to be struck off from the array of the respondents on the basis that he enjoys diplomatic immunity from being sued in a Court."

In view of the abovesaid decision of this Court, the claim application of Natha Singh, appellant, could not be dismissed on the ground that the legal representatives of Amrit Lal Gupta, deceased, were not brought on the record."

15. In the case of ***New India Assurance Company Ltd., New Delhi Vs. Norati Devi*** above referred, though the owner of the vehicle was added as a party to the claim petition, subsequently on the objection raised by the owner claiming diplomatic immunity as he was the then Assistant Attache, Embassy of the Federal Republic of Germany in India, his name was ordered to be struck off, the High Court has mulcted liability on the insurer and the relevant portion is extracted hereunder:-

"2. ..... *Even otherwise, we feel that if the Insurance Company is allowed to contest the claim in accordance with the principles of natural justice or the procedure envisaged by the Act and the rules on the subject, it is not open to it to escape liability on the basis of such a hypertechnical plea because in the ultimate analysis it alone has to satisfy the claim. Section 96 of the said Act only clarifies that if an award is made, it would be the duty of the Insurance Company to meet the claim. It nowhere lays down that if the Insurance Company is allowed to contest the liability in the absence of the insurer it should not be held liable. It is significant to mention that in Smt. Misri Devi's case (supra), decided by a learned Judge of this Court it was conceded before him that owner of the vehicle was a necessary party to the proceedings. As at present advised, we cannot subscribe to the broad proposition that an Insurance Company can never be held liable so long as the insurer is not impleaded as a party to the proceedings, or having been impleaded his name is ordered to be struck off from the array of respondents on the basis that he enjoys diplomatic immunity from being sued in a Court."*

16. In the case of ***Pushpa Bajirao Thorat and others Vs. Dnyaneshwar Kondaji Auti and others*** reported in ***2019 (2) TN MAC 132 (Bom.),*** Bombay High Court has specifically held that death of the

insured pending claim petition would not absolve insurer from its liability to indemnify the insured and the relevant passage is extracted hereunder:-

> *"19. Considered the facts elaborated above in light of the Judgments referred herein above delivered by Karnataka High Court and Punjab and Haryana High Court and having regard to the provision under Section 155 of the M.V.Act, it can be unhesitatingly said that the Tribunal should not have dismissed the claim petition on the ground that the legal heirs of opponent No.1 i.e. owner of the vehicle were not brought on record by the claimants. From the facts, it is quite evident that death of opponent No.1 i.e insured of the offending Pick Up Van during pendency of the claim petition would not have absolved the Insurance Company from its liability to indemnify the insured and the award could have been passed by the Tribunal against the insurer."*

17. The above decisions are squarely applicable to the case on hand. Even in the present case, admittedly, the second respondent/owner of the vehicle was very much alive on the date of accident and also on the date of claim petition. As already pointed out, the vehicle of the second respondent was insured with the third respondent. Considering the above,

this Court has no hesitation to hold that the contention of the third respondent that they cannot be made liable as the claim petition itself was dismissed as against the owner of the vehicle, is devoid of merits and the same is liable to be rejected.

18. Now turning to the next objection of the third respondent that the lorry driver was not possessing valid and proper driving licence at the time of accident, the third respondent, in an attempt to prove the said defence, has summoned and examined the staff attached to the Regional Transport Office (RTO), Trichy as R.W.2 and R.W.2, in his evidence, would say that the lorry driver Pavithiran possessed licence to drive non-transport light motor vehicles and subsequently, he obtained badge endorsement to drive the transport light motor vehicles on 19.11.2013 and that their office has not given any licence to drive the heavy vehicles to the said Pavithiran on the date of accident i.e., on 10.12.2011. R.W.2 has produced the letter given by the Regional Transport Officer, Trichy West and also the driving licence Form-4 for the first respondent Pavithiran, wherein, it is evident that he was given licence for driving LMV and M/CYCL.WG with effect from 14.09.2011 and badge No.660 was given

with effect from 19.11.2013 and the same was valid for the period between 19.11.2013 and 18.11.2016.

19. The learned counsel appearing for the third respondent would submit that through R.W.2 evidence and Ex.X.1 and Ex.X.2, the third respondent has proved that the second respondent's driver was not possessing valid driving licence to drive the offending vehicle at that time.

20. At this juncture, it is necessary to refer the Full Bench decision of the Kerala High Court in ***National Insurance Co. Ltd. Vs. Jisha*** reported in ***2015 ACJ 610,*** wherein, a reference was made as to whether the absence of a badge by the driver of a transport vehicle is sufficient to exonerate the insurance company from liability to pay compensation to the claimant or at least whether the insurance company is entitled to the right to recover the compensation paid by them to the claimant from the owner and after referring to various decisions including the Hon'ble Supreme Court, the Kerala High Court has observed that mere technical violation like absence of a badge would not permit the insurer to avoid liability towards the third party and the relevant passages are extracted hereunder:-

"23. Learned counsel for the appellants, Shri Lal George referred to the last sentence in paragraph 17 that "It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy" and submitted that in the light of the above view taken, the dictum laid down therein will only be in favour of the insurance company. Learned counsel for the respondents submitted that such an interpretation cannot made, as the said observation cannot be taken out of the context and that it was made while explaining the scheme of S. 149 of the Act and not on the facts of the said case. We are of the view that the Apex Court therein has clearly held that since the driver was holding a valid driving licence to drive alight motor vehicle, the absence of any endorsement in the said licence to drive Mahindra Maxi Cab is not fatal. In paragraph 17, S. 149 was explained.

24. In the light of the view taken in paragraph 18 of the above judgment, the question is whether the absence of badge will be fatal. Under S. 149(2)(a)(ii) of the Act, it should be proved by the insurance company to avoid the liability under the policy that the vehicle was being driven by a person who was not duly licensed. As far as authorisation is concerned, it is only provided under S. 3 of the Act. The words "duly licenced" have been interpreted by *the Apex Court in Swaran Singh's case (supra) and Iyyappan's case (supra). In Swaran Singh's case (supra), it was held in paragraph 38 that the words "effective licence" used in S. 3 cannot be imported for sub-section (2) of S. 149 of the Motor Vehicles Act. The words "duly licenced" used in sub-section (2) of S. 149 are used in past tense. Their Lordships have considered an important factor that as far as third parties' right to get compensation is concerned, the insurance company will have to meet the liability. The Division Bench of this Court in Balakrishnan's case (2011 (4) KLT 412), after interpreting R. 6 of the Rules, was of the view that the alleged omission to apply for and obtain a badge is purely technical and cannot be said to be a fundamental breach as insisted by sub-para (vi) in paragraph 102 of the judgment in Swaran Singh's case (supra). As far as the proficiency for driving a vehicle is concerned, what is important is the obtaining of a driving licence under the relevant rules, viz. The Central Motor Vehicles Rules framed under S. 27 of the Act. As far as badge is concerned, R. 6 of the Kerala Rules alone is important. The State rules do not cover definitely, the area and the subjects covered by the Central Rules for issuance of licence, as rightly pointed out by the learned counsel for the respondents. Even though Shri Lal George submitted that the emphasis given with regard to the interpretation of S.149(2)(a)(ii) in Swaran Singh's case (supra) cannot apply* *herein, we cannot agree. In that view of the matter, the insurance company will have to prove that absence of a badge was so a fundamental breach which has contributed to the cause of the accident. Therefore, any technical violation of the rules cannot help the insurance company in such cases. We are of the opinion that the view taken by the Apex Court in Swaran Singh's case (supra) in sub-para (iv) of para 102, as already noted, and in the light of the provision under S. 149(2)(a)(ii) which uses the words "duly licenced", minor breach cannot help the insurance company to avoid liability.*

25. In Iyyappan's case (2013 (3) KLT SN 32 (C. No. 33) (SC) : (2013) 7 SCC 62), as we have already noticed, the intention of the legislature with regard to the provisions in Chapter XI has been examined and it was explained that the legislature has made third party insurance compulsory, so as to ensure that the victims of the accident could be able to get compensation for the death or injuries suffered. In the light of the above principles, an interpretation of S. 149 of the Act commensurate with the legislative policy, will have to be adopted. The statute has provided the liability on the part of the insurer so as to pay compensation to third parties. Thus, it can be seen that as laid down by the decisions of the Apex Court, a more extensive remedy has been conferred upon those who have obtained judgments *against the user of the vehicle. The question, therefore, will be whether the insurer can try to avoid liability with out proving that the breach was so fundamental. In the light of the discussion made already, a mere technical violation like absence of a badge could not lead to such a situation, whereby the insurer can avoid liability of the third party. The scheme of the Act will have to be taken into consideration while testing the sustainability of the arguments raised by the insurance company. If that be so, we are of the view that the argument raised by the learned counsel for the insurance company cannot hold good. Therefore, the words "effective licence" in S. 3 cannot ipso facto come to the aid of the insurance company in such cases. The above interpretation will only serve the object and purpose of the enactment and in tune with the same. The dictum laid down in Iyyappan's case (2013 (3) KLT SN 32 (C. No. 33) (SC) : (2013) 7 SCC 62), therefore, will squarely apply herein. In the absence of any evidence to show that the breach was so fundamental in causing the accident, there cannot be any automatic direction in allowing the insurance company to recover the amount from the owner also. Recently, the Apex Court in another judgment, viz.,Kulwant Singh & Ors. v. Oriental Insurance Company Ltd. (2014 (12) SCALE 356), has relied upon the judgment in Iyyappan's case (supra). That was a case where one Abdul Kadir died while driving Tempo No. HR-G-5234 which was* *hit by a Tempo (Tata-407) bearing No. DL-IL-D3186. The offending vehicle was a light goods vehicle. It was contended by the insurance company that they are entitled to recovery rights as the driving licence was for driving light motor vehicle and could not be equated with light goods vehicle. The High Court accepted their prayer. In paragraph 10 the view taken in S. Iyyappan's case (supra) was followed and we extract the said paragraph herein below:*

> *"10. In S. Iyyappan (supra), the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:*
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> > *18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Mai Cab, which*

is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment (Civil Misc. Appeal No. 1016 of 2002, order dated 31.10.2008 (Mad.) is, therefore, liable to be set aside. No contrary view has been brought to our notice."

21. The Hon'ble Supreme Court in ***Mukund Dewangam Vs. Oriental Insurance Co. Ltd.,*** reported in ***AIR 2017 SC 3668*** has concluded that a light motor vehicle includes a transport vehicle as well and therefore, the driver holding a light motor vehicle licence can also drive all vehicles of the class including a transport vehicle.

22. In the case of ***The Divisional Manager, Reliance General Insurance Co. Ltd., Vs. Kokila and others (C.M.A.No.2495 of 2018 dated 16.09.2019),*** a Division Bench of this Court has upheld the decision of the Tribunal rejecting the pay and recovery claim made by the insurer

following the decision of the Hon'ble Supreme Court in ***Mukund Dewangam's*** case.

23. Considering the above, the objection of the third respondent with regard to the driving licence of the first respondent is also devoid of substance and the same is liable to be rejected.

24. It is pertinent to note that the third respondent has not challenged the quantum of compensation awarded at, by the Tribunal.

25. Except the above, the third respondent has not canvassed any other reason or ground to impugned the award. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed. 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.

26. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 05.03.2015 passed in M.C.O.P.No.75 of 2012 on the file

of the Motor Accident Claims Tribunal/Additional Subordinate Court, Dindigul, is confirmed. The appellant/insurer is directed to deposit the entire award amount with interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit being made, the first respondent/claimant is permitted to withdraw the said amount, with interests and costs. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

11.10.2023

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

1. The Motor Accident Claims Tribunal/
   Additional Subordinate Court, Dindigul.

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

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.880 of 2017
and
C.M.P.(MD)No.9429 of 2017

Dated : 11.10.2023