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C.M.A.No.865 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 05.07.2024	Delivered on 12.07.2024
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No. 865 of 2022

1.Rajathi

2.Shahul Hameed

3.Shaik Abhulla

...Appellants

Vs.

1.M.J.Vageese

2.The United India Insurance Company Ltd.,
No.48, Chandra Plaza,
Arcot Road, Saligramam,
Chennai - 600 093.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 20.09.2021 made in MCOP.No.149 of 2018 on the file of the Motor Accident Claims Tribunal, II-Additional District and Sessions Court, Poonamallee, Thiruvallur District.

For Appellants : Mr.M.Sivakumar



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For Respondents : Mr.S.Dhakshinamoorthy for R2

R1 - Served - No appearance

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The claimants in MCOP.No.149 of 2018 are on appeal, aggrieved by the exoneration of the Insurance Company from the liability by the Tribunal. The said original petition was filed by the claimants seeking compensation for the death of one Jaffar Ali who died in a motor accident that occurred on 10.04.2018 at about 08.00 a.m.

2. It is the case of the claimants that the deceased was walking cautiously on the Ambattur to Oragadam Gandhi Main Road, from South to North, while he was going near the Government Primary Health Center, Oragadam, the motor cycle bearing Registration No.TN-13-J-6463 ridden by his rider in a rash and negligent manner came from behind and hit the deceased. As a result of which, the deceased sustained multiple injuries and died on 11.04.2018 at the Billroth Hospital, Chennai.

3. Terming negligence on the part of the rider of the motor cycle, the



claimants sought for compensation of Rs.60,03,000/-. The claimants sought to justify the quantum by contending that the deceased was earning a sum of Rs.45,000/- per month and due to his death, the family has lost its sole bread winner and hence, the claimants are entitled to compensation of Rs.60,03,000/-. Contending that the vehicle which was cause for the accident namely, TN-13-J-6463 was insured with the 2nd respondent / Insurance Company and as such, the Insurance Company is liable to pay the compensation.

4. As usual, the owner of the motor cycle namely, 1st respondent / the Insured remained exparte. The 2nd respondent / Insurance Company resisted the claim contending that the accident did not occur due to the rash and negligent driving of the rider of the motor cycle, but was due to the fact that the deceased crossed the road all of a sudden which resulted in the accident. It was also claimed that the First Information Report as a fabricated document and no criminal prosecution was lodged. It was also contended that the rider of the motor cycle at the time of the accident, V.Byju, son of the 1st respondent aged only about 14 years and he was not qualified to obtain a driving license. Since the vehicle was driven by a



person without a driving license, the Insurance Company is not liable to pay the compensation.

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5. At trial, the 1st petitioner was examined as P.W.1 and two other witnesses namely, an eye-witness and the Additional Executive Officer of the employer of the deceased were examined as P.W.2 & P.W.3. Exs.P1 to P33 were marked. On the side of the respondents, one C.Munusamy, Inspector of Police, Poonamallee Traffic Investigation was examined as R.W.1 and Exs.R1 & R2 were marked.

6. On the evidence available, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the rider of the motor cycle. The Tribunal, accepted the evidence of P.W.2, an eye-witness, and the contents of the First Information Report in that regard. On the entitlement of the claimants to compensation, the Tribunal concluded that the deceased was drawing a sum of Rs.45,000/- per month, since he was aged about 54 years and he was due to retire at the age of 58 years, the Tribunal applied split multiplier and adopted a multiplicand of 45 months. Thus, the Tribunal fixed the total income at Rs.20,25,000/-. It adopted future prospects at 15%,



in view of the age of the deceased and calculated the total loss of dependency before superannuation at Rs.23,28,750/-. After superannuation, the Tribunal took the monthly income at Rs.10,000/-, added 10% towards future prospects, deducted 1/3rd towards personal expenses and applied a multiplier of 9. Thus, it calculated the loss of dependency after superannuation at Rs.7,91,964/-. Adding the loss of dependency prior to superannuation and the loss of dependency determined after superannuation, the Tribunal arrived at the total loss of dependency at Rs.31,20,714/-. The Tribunal awarded a sum of Rs.40,000/- towards loss of consortium to the 1st claimant and Rs.40,000/- each towards filial consortium to the claimants 2 and 3, apart from awarding a sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, the tribunal arrived at the total compensation at Rs.32,70,714/-.

7. The Tribunal however, found that in view of the fact that the vehicle was driven by a minor and there was a breach of policy condition, the insurance Company will not be liable to pay compensation. On the aforesaid conclusion, the Tribunal directed the 1st respondent / owner of the



vehicle to pay the entire compensation and exonerated the Insurance Company from its liability. Aggrieved, the claimants are on appeal.

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8. We have heard Mr.M.Sivakumar, learned counsel for the appellants and Mr.S.Dhakshinamoorthy, learned counsel for the 2nd respondent / Insurance Company. The 1st respondent though served, is not appearing either in person or through counsel, duly instructed.

9. Mr.M.Sivakumar, learned counsel for the appellants would vehemently contend that the Tribunal erred in adopting the split multiplier which is against the dictum of the Hon'ble Supreme Court in ***R.Valli and Others Vs. Tamil Nadu State Transport Corporation Ltd.*** reported in **2022 (1) TN MAC 289 (SC)**. He would also contend that the conclusions of the Tribunal that the Insurance Company is not liable is also opposed to law. The learned counsel would place reliance on the judgment of ours in ***Iffco-Tokio General Insurance Company Ltd., Vs. Kalaiselvi and others*** reported in **2024 (1) TN MAC 747 (DB)** wherein, we had held that the Insurance Companies will be entitled to an order for pay and recovery from the owner of the vehicle for having allowed a minor to ride the vehicle and



the Insurance Company ought not to have been exonerated from its liability.

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10. Contending contra, Mr.S.Dhakshinamoorthy, learned counsel for appearing for the Insurance Company would submit that in ***Puttamma and Others Vs. K.L.Narayana Reddy and Others*** reported in (2013) 15 SCC 45, the Hon'ble Supreme Court has held that split multiplier ought not to be applied as a routine case unless there is a specific reason. Therefore, according to the learned counsel, the Tribunal has given specific reasons for applying split multiplier and hence, the judgment of the Tribunal is in accordance with law. On the liability, the learned counsel for the Insurance Company would submit that once it is found that the rider of the motor cycle had no license and there being a violation of the policy condition, the Insurance Company would not be liable. We have considered the rival submissions.

11. The two questions that arise for determination in this appeal are as follows:-

- "i) *Whether the Tribunal was right in applying split multiplier.*
- ii) *Whether the Tribunal was right in exonerating the Insurance Company."*



12. On the issue of split multiplier, the Hon'ble Supreme Court in ***R.Valli and Others Vs. Tamil Nadu State Transport Corporation Ltd.***, has pointed out that application of split multiplier runs counter to the pronouncements of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and Others***. The Hon'ble Supreme Court after considering the judgments in ***Sarla Verma and Another Vs. Delhi Transport Corporation and Another*** reported in (2009) 6 SCC 121 as well as ***National Insurance Company Limited Vs. Pranay Sethi and Others*** reported in (2017) 16 SCC 680 has concluded that the application of split multiplier is improper. The Hon'ble Supreme Court held that after pronouncement of the Supreme Court in ***National Insurance Company Ltd Vs. Pranay Sethi and Others***, application of split multiplier is clearly erroneous.

13. In paragraph 11 of the judgment in ***R.Valli and Others Vs. Tamil Nadu State Transport Corporation Ltd.*** reported in 2022 (1) TN MAC 289 (SC), the Hon'ble Supreme Court observed as follows:-

"11. Thus, we find that the method of determination of Compensation applying two Multipliers is clearly erroneous and run counter to the judgment of this Court in Pranay



Sethi, affirming the judgment in *Sarla Verma*. Since the deceased was 54 years of age on the date of incident, therefore, the suitable multiplier would be 11 as per the judgment of this Court in *Sarla Verma* approved by this Court in *Pranay Sethi*."

In view of the categorical pronouncements of the Hon'ble Supreme Court as late as 10.02.2022, we are unable to accept the contention of the learned counsel for the Insurance Company based on the judgment in *Puttamma and Others Vs. K.L.Narayana Reddy and Others* which is of the year 2013 and prior to the pronouncement in *National Insurance Company Ltd., Vs. Pranay Sethi*. Hence, the adoption of split multiplier by the Tribunal is incorrect.

14. On the liability of the Insurance Company, the learned counsel for the appellants / claimants would rely upon the judgment of ours in *Iffco-Tokio General Insurance Company Ltd., Vs. Kalaiselvi and others* reported in **2024 (1) TN MAC 747 (DB)** wherein, we had upheld the order for pay and recovery made by the Tribunal. Insurance is a matter of contract and the claimant is a third party. The claimants are given a right to recover the compensation directly from the Insurance Company in terms of the proceedings of the motor cycle which are a special legislation. A breach of

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contract by one of the parties to the contract does not, and cannot normally affect a third party. If an owner of the vehicle lets a person without license or a person who is not qualified to obtain a license to ride or drive the vehicle, there is definitely a breach of contract which is called a breach of policy conditions in insurance contracts. Whether such breach of policy condition would affect a third party is the question which has to be answered.

15. The Tribunal has itself held that the accident occurred due to the rash and negligent driving of the rider of the two wheeler and, he was, as such responsible for the accident. Whether such violation of the policy condition would affect the right of a third party claimant to compensation is the question that has to be answered. In our considered opinion, the answer to that question would be definitely in the negative. The Tribunal has placed reliance on the judgment of the single Judge of this Court in ***M.Ananthi and Others Vs. P.Venkatesan and another*** made in ***CMA.No.1181 of 2016*** dated ***20.08.2020*** wherein, the learned Judge held that the owner of the vehicle being a tortfeasor himself, the Insurance Company cannot be made liable. The facts are slightly different. In ***M.Ananthi and Others Vs.***



P.Venkatesan and another, it was Venkatesan who was the tortfeasor, because he himself invited the accident because of his rash and negligent driving.

16. On the other hand, in **National Insurance Company Limited Vs. Swaran Singh** reported in **AIR 2004 SC 1531**, the Hon'ble Supreme Court considered the right of the Insurance Company to avoid liability on the ground of breach of policy condition wherein, the Hon'ble Supreme Court held that a breach of policy condition by itself does not enable the Insurance Company to avoid its liability. It was also held that the Insurance Company must not only establish the defence but it must also establish the breach on the part of the owner of the vehicle. In the case on hand, the Insurance Company had not chosen to let in any evidence apart from examining the Inspector of Police.

17. In **S.Iyappan Vs. United India Insurance Company Ltd.**, reported in **2013 (7) SCC 62**, the Hon'ble Supreme Court held that the statutory right of the third party to recover the amount of compensation from the Insurer cannot be denied and 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 found in the insurance policy. While doing so, the Hon'ble

Supreme Court observed as follows:-

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"18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. 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."



18. In fact, the Hon'ble Justice Dr.G.Jayachandran while deciding ***M.Ananthi Vs. P.Venkatesan*** had taken note of these two decisions of the Hon'ble Supreme Court and had held that since Venkatesan who is insured himself was tortfeasor, the Insurance Company would not be liable. In the case on hand, the 1st respondent / owner of the vehicle is not the tortfeasor, there is nothing to show, he allowed the minor to ride the two wheeler, but, at the same time, we cannot turn a blind eye to such violations. As observed by the Hon'ble Supreme Court in ***S.Iyappan Vs. United India Insurance Company Ltd.***, the best thing that can be done to protect the rights of the Insurance Company is enable it to recover the award amount from the Insured in such cases, where there is a violation of policy conditions.

19. In the case on hand, undoubtedly, there is a violation of policy condition but, it is not by the Insured. A violation of policy condition by another person who is not a party to the contract of Insurance will not, as held by the Hon'ble Supreme Court in ***S.Iyappan vs. United India Insurance Co. Ltd.***, affect the rights of a third party to recover the compensation from the Insurance Company, of course, subject to right of the Insurance Company to recover the same from the insured. We are



therefore, of the considered opinion that the reliance placed by the Tribunal on *M.Ananthi and Others Vs. P.Venkatesan and another* is wholly misconceived and also against the decision of the Hon'ble Supreme Court in *S.Iyappan Vs. United India Insurance Company Ltd.* Therefore, the Insurance Company will be definitely liable to pay the award amount subject to its right to recover the same from the Insured namely, the 1st respondent.

20. The next question is what would be the compensation that would be payable to the claimants. We have held that the adoption of split multiplier is clearly erroneous. Hence, we will have to quantify the compensation payable to the claimants. The Tribunal has accepted Ex.P33 and has fixed the salary of the deceased at Rs.45,000/-. Considering the age of the deceased at the time of the accident namely, 54 years, we have to adopt future prospects at 10%. If we are to add 10% to the salary that is to be determined, the monthly salary of the deceased would be Rs.49,500/-. If we are to deduct 1/3rd towards his personal expenses, the loss of monthly dependency would be Rs.33,000/-. The multiplier adopted in case of victim aged 54 years is 11, as per the judgment of the Hon'ble Supreme Court in *Sarla Verma Vs. Delhi Transport Corporation*. Therefore, the total loss of



dependency would be Rs.33,000/- x 12 x 11 = Rs.43,56,000/-. Thus, we find that the claimants would be entitled to Rs.43,56,000/- as compensation in the head of loss of dependency. The compensation of Rs.40,000/- awarded towards loss of consortium to the 1st claimant and Rs.40,000/- each awarded towards loss of love and affection to the claimants 2 & 3 and Rs.15,000/- each towards funeral expenses and loss of estate are in tune with the dictum of the Hon'ble Supreme Court in *National Insurance Co. Ltd., Vs. Pranay Sethi and Others* and hence, they are confirmed. Thus, the total compensation payable to the claimants would be Rs.45,06,000/-.

21. In the light of the above, this Civil Miscellaneous Appeal is **partly allowed**, the award of the Tribunal is modified, granting a sum of Rs.45,06,000/- to the claimants and it is made clear that the Insurance Company would be liable to pay the compensation subject to its right to recover the same from the Insured by filing an Execution Petition in the very OP. The Insurance Company will have eight weeks time to deposit the compensation as awarded by us with interest at 7.5% from the date of claim petition i.e., from 04.06.2018 till date of payment. We find that the claimants have restricted the value of the appeal to Rs.45,00,000/-, they will pay the Court fee payable on the excess amount of Rs.6,000/-.

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22. The compensation is apportioned as follows:-

i) The 1st claimant / wife would be entitled to a sum of Rs.20,00,000/- with proportionate interest and costs.

ii) The claimants 2 & 3, who are the sons would be entitled to Rs.12,53,000/- each with proportionate interest and costs.

iii) The claimants are permitted to withdraw the said amounts as apportioned above, once it is deposited.

23. This Civil Miscellaneous Appeal is **partly allowed**. No costs.

(R.S.M., J.) (R.S.V., J.)
12.07.2024

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The Motor Accident Claims Tribunal,
II - Additional District and Sessions Court,
Poonamallee, Thiruvallur District.

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R.SUBRAMANIAN, J.
and



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