IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.2532 of 2021

Judgment reserved on 25.03.2024	**Judgment pronounced on 28.03.2024**

Thangaraj ... Appellant

Vs.

1.Muthukumar
2.R.Saradha
3.The New India Assurance Co. Ltd.,
435, T.P.Road, R.S.Puram,
Coimbatore – 2.
4.V.Selvalakshmi ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 04.06.2018 made in MCOP No.1363 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court at Dharapuram.

For Appellant : Mr.Ma.P.Thangavel

For R-1 & R-2 : No appearance

For R-3 : Mr.M.Krishnamoorthy

For R-4 : Mr.M.Guruprasad

JUDGMENT

This appeal has been preferred by the appellant/claim petitioner, challenging the award in M.C.O.P.No.1363 of 2012 passed by the learned Motor Accident Claims Tribunal/Sub-Court Judge, Dharapuram, on the point of liability as well as quantum.

2. On the point of quantum and liability, the Tribunal has taken note of the fact that the vehicle was issued with a temporary registration certificate on 03.01.2012 within Ex.P3. Under Ex.P6/Charge sheet, the policy of Insurance Company came into force between 03.01.2012 to 02.01.2013. The accident in the instant case has happened on 24.02.2012. The First Information Report was marked as Ex.P1. However, since the vehicle was running with the temporary registration and ought to have made it permanent registration within 30 days and as it amounts to the violation of policy condition, the Tribunal has held that the Insurance Company of the offending vehicle has to be exonerated from its liability and directed the owner of the TATA Ace to pay the compensation to the claimants.

3. On the point of quantum of compensation, taking into

consideration, the nature and character of the avocation said to have been carried on by the deceased, who is aged about 70 years, the Tribunal fixed notional income of Rs.5,000/- per mensum and deducted 1/3rd towards personal expenses and applied multiplier 5, following the judgment of the Hon'ble Supreme Court in ***SARLA VERMA & OTHER v. Delhi Transport Corporation & Another reported in 2009 (2) TNMAC (1) SC.***

4. With regard to the medical expenses, taking into consideration Ex.P11 series and Ex.P12 series/medical bills, the Tribunal has awarded a sum of Rs.1,75,970/-towards medical expenses. Learned counsel for the claim petitioner/appellant relied upon the Judgment of this Court, in ***Future General India Insurance Company Limited Vs. Valli and Ors., reported in 2020 SCC OnLine Mad 5214***, wherein in paragraph 8, it has been held as follows:-

> *"Thus, it is clear from the records that on the date of the accident on 06.12.2011 the vehicle had no valid registration number. It amounts to violation of Motor Vehicles Act. However, the insurance company is bound to pay the claimants and to recover the same from the owner."*

5. The learned counsel appearing for the third respondent/Insurance Company would contend that on the date of accident, the time fixed for permanent registration has expired and therefore the same amounts to fundamental breach of contract of insurance. In support of his contention, the learned counsel relied upon the judgment of Hon'ble Supreme Court in ***United India Insurance Co. Ltd. vs. Sushil Kumar Godara reported in 2021 (2) TNMAC 511 (SC)*** and contended that the Insurance Company cannot be made liable for payment of compensation to the claimants.

6. The learned counsel appearing for the appellant made his submissions in support of the award passed by the Tribunal.

7. Heard the learned counsel appearing for the appellant as well as third respondent / insurance company and perused the materials available on record.

8. On perusal of the records, the following points for determination has arisen in this appeal -

(a) Whether non-registration of vehicle (permanent registration) in the absence of any condition in the policy that the insurer is not liable to third party claim for want of registration, can the insurer raise the plea of defence under Section 149 for repudiation of claim on the ground of want of registration certificate?

(b) In such circumstances, whether the principles of pay and recovery will come into operation ?

9. From the ***Sushil Kumar Godara's case,*** *cited supra,* I find that the matter has arisen under the Consumer Protection Act. With regard to 'services' as defined under Consumer Protection Act, the Hon'ble Supreme Court has taken a view that in case of theft of the insured vehicle. the Hon'ble Apex Court considered the plea of expiry of temporary registration and therein temporary registration time limit has expired and permanent registration was not made, in such factual matrix and in relation to phrase 'service', as defined in Consumer Protection Act, the Hon'ble Supreme Court has held that the insurer cannot disown his duty caused upon him and hence has rejected the case of the claimant on factual matrix of the case, that for the lapse of temporary registration prior to theft of car and in consequence thereof, the insurance company was exonerated. The

claim was made by the owner of the vehicle.

10(a) In the decision reported in ***2019 (2) TNMAC 43 (HP) in National Insurance Co. Ltd. v. Kamal Kishore and others*** liability of the insurer in respect of unregistered motor vehicle namely where the temporary registration time has expired and in such circumstances, the Hon'ble Division Bench of the Himachal Pradesh High court has taken a view that the provisions of 'compulsory insurance' made in Act with a view to protect rights of third parties also and there is no stipulation or condition in Policy that insurer is not liable to third party claim for want of valid registration certificate and hence held that no such defence is available to insurer under Section 149 of the Motor Vehicle Act for repudiation of claim on the ground of want of registration certificate. In such circumstances, the Court has held that insurer cannot escape its liability towards third party merely on the ground of non-registration of the vehicle.

10(b) So also is the decision of the Hon'ble Punjab & Haryana High Court in ***Taranjit Kaur v. Subhas Chand reported in 2015 ACJ 550.***

10(c) Hon'ble Dr.Justice G.Jayachandran in a judgment in ***Future General India Insurance Company Limited v. Valli and others reported in 2020 SCC Online Mad 5214*** has held in Para 8 as follows -

> *8. .... Thus, it is clear from the records that on the date of the accident on 06.12.2011, the vehicle had no valid registration number. It amounts to violation of Motor Vehicles Act. However, the insurance company is bound to pay the claimants and to recover the same from the owner.*

10(d) Thus, this Court finds that the observation that the Hon''ble Supreme Court in ***Narinder Singh's case*** has held that non-registration of vehicle (permanent registration) as fundamental breach of policy condition is only against insured person (owner of the vehicle) and not with respect to third party claim.

11. In view of the above, I have no hesitation to hold that the claim petitioners being the third party, the Insurance Company, though not liable to pay the compensation, the principles of pay and recovery will come into operation. Accordingly, the point is answered in favour of the appellant/claim petitioner.

12. On factual position, the temporary permit is available between 03.01.2012 to 02.01.2013. The date of accident is 24.02.2012. On the date of accident, the time fixed for getting the permanent registration number has expired. In other words, the temporary registration number has expired. Therefore, in view of the discussion supra, though the Insurance Company is not liable to pay compensation, the principles of pay and recovery will come into operation.

13. At the time of accident, the deceased Thirumalaisamy was an agriculturist cum owner of Goat farm, aged about 70 years. The date of accident is 24.02.2012 and hence, I find that the notional income of the deceased can be fixed as Rs.8000/- per month. Thus, by applying multiplier 5 and deducting 2/3rd towards personal expenses, the compensation towards loss of dependency is enhanced as follows -

Rs.8000 x 12 x 5 x 2/3 = Rs.3,20,000/-

14. The compensation awarded by the Tribunal towards loss of love & affection is hereby enhanced to Rs.80,000/- (40000 x 2). The compensation awarded by the Tribunal under other heads are just and

reasonable and hence the same are confirmed. Accordingly, the compensation awarded by the Tribunal is enhanced from **Rs.4,55,970/- to Rs.6,05,970/-,** break-up as follows -

Sl. No	***Heads under which the amount is awarded***	***Amount awarded by the Tribunal – Rs.***	***Amount awarded by this Court – Rs.***
1.	Loss of dependency	2,00,000/-	3,20,000/-
2.	Loss of love & affection	50,000/-	80,000/- (40,000 x 2)
3.	Loss of estate	15,000/-	15,000/-
4.	Funeral expenses	15,000/-	15,000/-
5.	Medical expenses	1,75,970/-	1,75,970/-
	Total	**4,55,970/-**	**6,05,970/-**

15. The 4th respondent herein is the married daughter of the deceased Thirumalaisamy and the appellant herein is the son of the deceased who claims to be depending upon the income of the deceased.

16. In total, the appellant / claim petitioner is entitled to a sum of Rs.6,05,970/- (Rupees Six Lakhs Five Thousand Nine Hundred and Seventy only). It is made clear that the appellant is not entitled for interest for the period of delay in filing the petition.

17. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from **Rs.4,55,970/- to Rs.6,05,970/-,** to the extent indicated above, alongwith 7.5% interest per annum. No costs.

(ii) the third respondent/Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited, at the first instance and thereafter recover the same from the second respondent, owner of the vehicle.

(iii) on such deposit being made, the appellant is permitted to withdraw a sum of Rs.4,05,970/- and the 4th respondent is permitted to withdraw a sum of Rs.2,00,000/-, alongwith proportionate interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

28.03.2024

rgr
Index : Yes/No
Speaking/Non-speaking order

RMT.TEEKAA RAMAN, J.

rgr

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Dharapuram.

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

Judgment in
C.M.A.No.2532 of 2021

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