



WEB COPY

C.M.A.No.292



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

C.M.A.No.2929 of 2022
and C.M.P.Nos.22666 & 22668 of 2022

P.Sampathkumar

... Appellant

-VS-

1.R.Natarajan
2.Kamalam
3.A.Kalimuthu

4.M/s.Cholamandalam MS General
Insurance Company Ltd.,
Dare House, 2nd Floor, No.2,
N.S.C.Bose Road, Chennai 600 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, pleaded to set aside the Judgment and Decree passed by the Motor Accidents Claims Tribunal and Special Sub Court, Coimbatore in M.C.O.P.No.951 of 2004 dated 29.10.2018 and allow the Civil Miscellaneous Appeal.



For Appellant : Mr.M.Rajasekar

For Respondents : No Appearance
1 to 3

For Respondent 4 : Ms.L.Sai Pooja

JUDGMENT

This Civil Miscellaneous appeal has been filed by the owner of offending vehicle to set aside the Judgment and Decree passed by the Motor Accidents Claims Tribunal and Special Sub Court, Coimbatore in M.C.O.P.No.951 of 2004 dated 29.10.2018.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. The case of the appellant is that he is the owner of the Maxi Cab Van bearing Registration No. TN 38 AP 4828 insured with the fourth respondent herein. He engaged third respondent as a driver. On 14.05.2013 at about 3.00 p.m. his vehicle was involved in an accident at Coimbatore Puliyakulam Road opposite to Vidya Niketan Public School and due to the accident one



Manikandan was sustained grievous injuries and subsequently succumbed to the injuries.

WEB COPY

4. The respondents 1 and 2 have filed a claim petition seeking compensation for the death of the deceased Manikandan and claimed Rs.25,00,000/- (Rupees Twenty Five Lakhs only) by involving Section 170 of the Motor Vehicles Act against the respondents 3 and 4.

5. Before the Tribunal the driver and owner of the vehicle have not contested the claim petition and remained *ex parte*. The insurance company contested the claim and alleged that the driver of the van i.e., the third respondent herein was not having valid driving licence. Hence, the insurance company is not liable to indemnify the appellant / owner of the vehicle. It was accepted by the Tribunal and since the deceased was a third party, the Tribunal has adopted the principle of pay and recover. It also quantifies the compensation and fixed at Rs.14,90,800/- (Rupees Fourteen Lakhs Ninety Thousand Eight Hundred only) with interest payable to the respondents 1 and 2 herein.

6. Aggrieved over the finding that the third respondent was not having



valid driving licence and the appellant was engaged him that he violated the policy conditions, this appeal has been filed by the owner of the vehicle.

WEB COPY

7. The learned counsel for the appellant submits that the Tribunal has rendered finding that the driver of the van was not having valid driving licence based on the entries made in the Motor Vehicles Inspection Report. There is no official from the Regional Transport Authority was examined to prove the non-possession of the licence by the driver of the van. Even in the Motor Vehicles Inspection Report there is clear reference about the production of driving licence at the time of motor vehicle inspection by the driver thereby the finding itself is based on misreading of Ex.P9.

8. The learned counsel for the Insurance Company submitted that based on Ex.P9 finding has been rendered that the driver of the van have not having valid driving licence and has admitted that they have not examined any official of Regional Transport Authority to prove, that the driver of the van have not having valid driving licence, at the time of accident.

9. I have considered the submissions made on both sides and perused the materials available on record.



10. Exhibit-P9 is the Motor vehicle inspection report issued by the Motor Vehicles Inspector, Grade-I Regional Transport Authority on 17.05.2013. The copy of the Ex.P9 was produced before me by way of typed set. In column 8, the Motor Vehicle Inspector recorded the driving licence number, date of expiry and additional entry relating to issuance of badge as all entered as follows:

“Particulars of driving Licence if available:

a. DL No. : TN 41 X 20040001357

b. DL Expiry : 27.06.2014

c. Badge : 0654/TN41X.2005”

11. The date of accident in this case is on 14.05.2013 and the entries in the Motor Vehicle Inspection Report shows that at the time of accident the driver namely Kalimuthu (3rd respondent) was having valid driving licence to drive the offending van. This exhibit has been misread, as if there is no mentioned about the driver, having valid driving licence. The Tribunal further held that the check report was issued to the driver but there is no such entry found in Ex.P9. This Court in several orders reiterated that proper person to speak about the possession of valid driving licence is an Official from the Regional Transport Authority. In this case admitted by, no official from Regional Transport Authority has been examined.



12. As discussed supra, this Court is of the view that the finding of Tribunal was based on the no evidence and the same is liable to be set aside.

Since in this case, the respondent failed to examine the Regional Transport Authority to prove the non-possession of valid driving licence, I am of the view that adoption of principle of “Pay and Recover” by the Tribunal is not valid and the same is liable to be set aside.

13. In the result, this Civil Miscellaneous Appeal is allowed to the extent that, insurance company is liable to indemnify and pay compensation on behalf of the owner of vehicle. As far as other part of Award is concerned same is confirmed. Consequently, connected civil miscellaneous petitions stands closed. No costs.

21.12.2024

rna

Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To

The Special Sub Court, Coimbatore.



WEB COPY

C.M.A.No.292



K. RAJASEKAR, J.

rna

C.M.A.No.2929 of 2022
and C.M.P.Nos.22666 & 22668 of 2022

21.12.2024