IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3489 of 2021
And
C.M.P.No.20165 of 2021

United India Insurance Company Limited
No.316 Upstairs of State Bank of India,
Main Road, Pothanur, Paramati Velur (TK)
Namakkal District. ... Appellant

Vs.

1.M.Pappathi
2.M.Saravanan
3.R.Selvi
4.S.Yuvaraj ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 25.08.2021 made in M.C.O.P.No.789 of 2017, on the file of Motor Accidents Claims Tribunal Sessions Judge, Special Court for Trial of Cases under SC/ST (POA) Act, Namakkal.

For Appellant : Mr.C.Paranthaman
For Respondents : R1 to R3 – No Appearance

R4 – Disd. Vide order dt.16/4/24

J U D G M E N T

The second respondent before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 25.08.2021 made in M.C.O.P.No.789 of 2017, on the file of the Motor Accidents Claims Tribunal, Sessions Judge, Special Court for Trial of Cases under SC/ST (POA) Act, Namakkal.

2.The learned counsel appearing for the appellant submitted that the claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.6 Lakhs alleging that on 05.03.2017 at about 09.45 a.m., near Olapalayam Bus Stop in Mohanur to Velur Main Road, the deceased Murugan was riding a bicycle. At that time a Palatina bike bearing Registration No.TN 88 X 2847 driven by its rider in a rash and negligent manner came in the opposite direction and hit against the bicycle, due to which, the deceased lost his life. After adjudication, the Tribunal awarded a sum of Rs.5,74,255/- as compensation to the claimant along with interest at 7.5% p.a. from the date of the petition till the date of realisation and costs and directed the appellant to deposit the compensation amount.

3.The learned counsel appearing for the appellant further submitted that the appeal has been filed only on the ground that the deceased did not possess valid licence at the relevant point of time and he possessed only learners licence and the same was marked by the appellant as Ex.R1 before the Tribunal, however, the Tribunal fastened the entire liability on the appellant, which is not sustainable one.

4.Heard the learned counsel appearing for the appellant. Though the names of the respondents 1 to 3/ claimants have been printed in the cause list, there is no representation for the respondents 1 to 3. Considering the pendancy of the appeal, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

5.The accident and the manner in which the accident happened are not disputed. This appeal has been filed only on the ground that the deceased did not possess valid licence at the relevant point of time and he possessed only learners licence.

6.The issue that arise for consideration in this appeal is whether the learners licence is a valid licence or not. A person who possess learners licence is entitled to get licence from the appropriate department after successful completion of 90 days.

7.Similar issue has already been considered by the Hon'ble Apex Court in the decision reported in ***(2004) 3 SCC 297 [National Insurance Company Vs. Swaran Singh and others]***, wherein it has been held as follows:

> ***110.*** *The summary of our findings to the various issues as raised in these petitions is as follows:*
>
> *(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.*

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only

establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes

inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to

deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

8.Clause (viii) in the summary of findings of the decision cited supra makes it clear that if a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree. Hence, this appeal is mis-conceived and is liable to be dismissed.

9.The civil miscellaneous appeal is dismissed. The judgment and decree dated 25.08.2021 made in M.C.O.P.No.789 of 2017, on the file of the Motor Accidents Claims Tribunal, Sessions Judge, Special Court for Trial of Cases under SC/ST (POA) Act, Namakkal, is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

29.11.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
Sessions Judge, Special Court for Trial of Cases
under SC/ST (POA) Act, Namakkal.

M.DHANDAPANI,J.
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