BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 09.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.25 of 2013

1. Saroja
2. Sundaresan
3. Indira
4. Selvarani ..Appellants/Claimants

.vs.

1. Pandiaraja
2. The Divisional Manager
   Oriental Insurance Company
   P.K.S.A. Arumugam Road,
   Sivakasi, Virudhunagar District .. Respondents/ Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to call for the records from the Motor Accident Claims Tribunal(Sub Court) Sivakasi dated 14.12.2011 made in M.C.O.P.No.27 of 2007 and enhance the award of compensation amount by allowing this Civil Miscellaneous Appeal.

For Appellants	: Mr.M.Ashok Kumar
For R1	: No appearance
For R2	: Mr.S.Veeranasamy

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.27 of 2007 on the file of the Motor Accident Claims Tribunal, Sub ordinate Court, Sivakasi, wherein the appellants being claimants have filed petition as against the respondents herein claiming compensation of Rs.3,00,000/-.

2. The Tribunal has awarded a sum of Rs.1,16,598/- and directed the first respondent to pay the award amount with interest @ 7.5% per annum from the date of petition till realization of the amount and dismissed the petition as against the second respondent/Insurance company.

3. Being aggrieved by the above said order of the Tribunal the petitioners who are the legal heirs of the deceased have filed this Civil Miscellaneous Appeal.

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

5**. The brief facts of the petition averments are:** On 04.12.2006 at about 5.00 pm., while the deceased and his son were travelling in a two wheeler bearing Reg. No. TN 67 U 9775 from Vembakottai to Sivakasi main road, at that time pick up van bearing Reg.No. TN67 L 1557 which belongs to the first respondent came in a rash and negligent manner and dashed against the two wheeler, due to which the deceased was thrown out and he sustained injuries. He was immediately taken to hospital and later he died due to the injuries sustained. The accident took place due to the rash and negligent driving of the first respondent/driver. At the time of accident the first respondent vehicle was insured with the second respondent, hence both the respondents are liable to pay the award amount.

6. **The brief averments in the counter filed by the second respondent are** : The petition is not maintainable either in law or facts . The occurrence was not took place as alleged in the petition. The accident took place due to rash and negligence on the part of the rider of the two wheeler and not occurred due to the negligence on the part of the driver of the first respondent. There is a delay of seven days in registering the First Information Report and the first respondent driver had no valid license to ply the load auto and thereby violated the condition of policy hence the second respondent is not liable to pay the compensation to the petitioners and hence prayed to dismiss the petition.

7. Before the Tribunal, on the side of the petitioners they examined P.W.1 to P.W.3 and marked exhibits Exs.P.1 to Exs.20 and Court documents were marked as Ex.C.1 to C.3. On the side of the respondents they have examined two witnesses as R.W.1 and R.W.2 and no documents and exhitis were marked. After evaluating the oral and documentary evidence adduced on either side the Tribunal has awarded a sum of Rs.1,16,598/- towards compensation along with interest @ 7.5% per annum and directed the first respondent to pay the said amount and the petition as against the second respondent/ Insurance company was dismissed.

8. Aggrieved over by the order of the Tribunal the petitioners have preferred this Civil Miscellaneous Appeal on various grounds.

9. The learned counsel appearing for the appellants would contend that the accident took place due to the rash and negligent driving of the driver of the first respondent and the Tribunal also correctly held the driver of the first respondent is liable for the accident but exonerated the insurance company from paying the award amount. The first respondent vehicle was duly insured with the second respondent, thereby the second respondent is liable to pay the award amount. However the Tribunal without considering the same erroneously passed award as against the owner of the vehicle and exonerated the insurance

company from the liability. The driver of the first respondent has license to drive the Light Motor Vehicle on the date of accident but he did not have badge for the load auto. Merely because of non holding of the badge, the Insurance company cannot escape from its liability and the insurance company is liable to settle the amount to the appellant/petitioner and it can recover the award amount from the owner of the vehicle ie., the first respondent /first respondent. The award passed by the Tribunal is meagre amount and the Tribunal ought to have awarded fair compensation, therefore the award passed by the Tribunal is liable to be set aside. Further the learned counsel appearing for the appellants relied on the judgment of this Court in the case of ***National Insurance Co.Ltd., Nagercoil .vs. Therasammal and others reported in 2016(1)TNMAC 119.***

10. The learned counsel appearing for the second respondent would contend that the first respondent vehicle was insured with the second respondent , however the driver of the first respondent had no valid badge to ply commercial vehicle and thereby violated the condition of policy, hence the trial Court has correctly exonerated the insurance company from the liability. Since the driver of the first respondent had no valid license question of pay recovery not would arise. Therefore, the order passed by the Tribunal is in order and this appeal is liable to be dismissed.

11. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i) Whether the appeal is liable to be allowed or not?

12. In this case there is no dispute with regard to the negligence on the part of driver of the first respondent. The respondents have also not denied the negligence on the part of the driver of the first respondent and the appeal has been preferred as against the quantum of compensation awarded by the Tribunal as well as the liability of the Insurance company. According the appellants/ petitioners, the vehicle of the first respondent/first respondent was insured with the second respondent/second respondent on the date of accident and the driver of the first respondent /first respondent had license to ply the LMV vehicle. According to the second respondent /second respondent though the driver of the first respondent/ first respondent had LMV license for transport vehicle he has no badge, since the first respondent vehicle was load auto. In this context the learned counsel appearing for the petitioners relied on the judgment of this Court in the case of ***National Insurance Co.Ltd., Nagercoil .vs. Therasammal and others reported in 2016(1)TNMAC 119,***wherein it is held as follows:

"2.It is well settled that the Apex Court and this Court in a catena of the following decisions, have consistently taken a view that the insurer shall pay the compensation and thereafter, they shall recover the amount from the vehicle owner, whenever the compensation was ordered on the ground that the driver did not posses valid license. The decisions are as follows:

(i)2011(1) TN MAC 641 (SC) - Jawahar Singh Vs. Bala Jain
(ii)(2013) 7 Supreme Court Cases 62 - S.Iyyapan Vs. United India Insurance Co. Ltd.
(iii)2010(2) TN MAC 388 (DB) - United India Insurance Company Limited Vs. V.Vijayakumar
(iv)2010(2) TN MAC 542 (DB) - Bajaj Allianz General Insurance Company Ltd. Vs. P.Manimozhi
(v)2009(2) TN MAC 103 (DB) United India Insurance Co. Ltd. Vs.S.Saravanan & another (DB)

3.In view of the categorical pronouncement of this Court and the Apex Court as referred to above, the appeal is disposed of by modifying the order of the Tribunal by directing the appellant to pay compensation to the claimant and thereafter recover the same from the insured. The claimant is permitted to withdraw the entire amount deposited by the appellant pursuant to the order dated 16.12.2009 of the court. Consequently, connected Miscellaneous Petitions are closed. No costs".

13. On careful perusal of the above said judgment, it is clear that if the driver of the vehicle involved in the accident has no valid license this Court can order for pay and recovery. In the case on hand also, the driver of the first respondent had license but he did not possess badge to ply the commercial vehicle. Therefore in view of the above said judgement this Court is inclined to order for pay and recovery, thereby it is appropriate to direct the second respondent/insurance company to pay the award amount to the petitioners and thereafter the same can be recovered from the first respondent. As far as quantum is concerned considering the nature of injuries, the Tribunal has awarded reasonable amount of Rs.1,16,598/- and thereby this Court has no warrant to interfere with the quantum of award passed by the Tribunal.

14. In view of the above discussions, this Civil Miscellaneous Appeal is partly allowed with cost. Therefore the award passed by the Tribunal is modified to the effect that the second respondent is hereby directed to pay the compensation amount of 1,16,598/- with interest @ 7.5% per annum as ordered by the Tribunal to the petitioners and thereafter the second respondent can recover the same from the first respondent. The second respondent is directed to deposit the said amount within a period of two months from the date of this judgment and the claimants are permitted to withdraw the entire amount by filing appropriate application before the Tribunal.

09.01.2024

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

1. The Motor Accident Claims Tribunal(Sub Court) Sivakasi .

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

P. DHANABAL,J.

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C.M.A.(MD)No.25 of 2013

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