BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.859 of 2024
and
C.M.P.(MD) No.9269 of 2024

The Branch Manager,
National Insurance Company Limited,
Nagercoil, Kanyakumari District. ... Appellant

Vs.

1.Leela Bai
W/o.Maria John

2.Amala Bai
D/o.Late.Pushpam

3.Stella Bai
D/o.Late.Pushpam

4.Sajeev
S/o.Chandran

5.Vijayakumar
S/o.Chellappan ... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree in M.C.O.P.No. 73 of 2017 dated 12.06.2023 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Padmanabhapuram.

For Appellant : Mr.J.S.Murali

For R1 to R3 : Mr.F.Deepak

For R4 and R5 : No appearance

J U D G M E N T

The instant appeal has been filed by the Insurance Company, mainly aggrieved by the fact that the Tribunal has not granted liberty to the appellant, Insurance Company, to pay and recover the compensation from the owner, as they had established before the Tribunal that the driver of the insured vehicle did not have a valid driving licence.

2. The finding on negligence and the quantum of compensation awarded by the Tribunal are not under challenge. Hence, the facts leading to the filing of the claim petition are unnecessary for the disposal of this appeal.

3. The learned counsel for the appellant, Insurance Company, submitted that both the driver and the owner of the insured vehicle remained *ex parte* before the Tribunal and that the Motor Vehicle Inspector's Report shows that the driving licence was not produced and

that they had specifically stated before the Tribunal that the driver of the insured vehicle did not have a valid driving licence; that the burden is on the owner of the insured vehicle to establish that the insured vehicle was driven by an authorised person with a valid driving licence; and that in the absence of the same, the Tribunal ought to have held that there was a breach of policy conditions and hence, the appellant is entitled to pay and recover the compensation from the owner of the insured vehicle.

4. Heard the learned counsel for the appellant and the first to third respondents. Though notice to the fourth and fifth respondents, the driver and the owner of the insured vehicle, has been served, none has entered appearance.

5. The only point for consideration in the instant appeal is whether the appellant can be directed to pay and recover the compensation from the fifth respondent, the owner of the insured vehicle.

6. The first to third respondents/claimants had marked Ex.P4, Motor Vehicle Inspector's Report, which shows that the driving licence was not produced at the time of the inspection. The driver of the insured vehicle

was shown as the fourth respondent herein. The appellant had filed a counter to the claim petition stating that the driver of the insured vehicle did not have a valid driving licence. In the light of the specific plea taken by the appellant and the observations made in the Motor Vehicle Inspector's Report (Ex.P4), this Court is of the view that the owner of the offending vehicle ought to have produced the evidence to establish that the vehicle was driven by an authorised person with a valid driving licence.

7. The Hon'ble Supreme Court in the case of **Pappu and others** Vs. **Vinod Kumar Lamba and another**, reported in 2018 SAR (Civil) 410, held that the Insurance Company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence, and the onus would shift on the Insurance Company only if the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence. The relevant portion reads as under:

"*11. The question is: whether the fact that the offending vehicle bearing No.DIL-5955 was duly insured by respondent No.2 Insurance Company would per se make the Insurance Company liable? This Court in the case of National Insurance Co. Ltd. (supra), has noticed the defences available to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The Insurance Company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time. In the present case, the respondent No.1 owner of the offending vehicle merely raised a vague plea in the Written Statement that the offending vehicle DIL-5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, the respondent No.1 did not enter the witness box or examine any witness in support of this plea. The respondent No.2 Insurance Company in the Written Statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence.*"

8. The fifth respondent, the owner of the insured vehicle, remained *ex parte* before the Tribunal and has not chosen to appear even before this Court. Therefore, in the light of the above observations of the Hon'ble Supreme Court, the fifth respondent ought to have proved the basic facts

within his knowledge that the insured vehicle was driven by the person with a valid driving licence. Further, the Motor Vehicle Inspector's Report (Ex.P4) also suggests that the driving licence was not produced at the time of the inspection. In the light of the legal position and the facts in the instant case, this Court is of the view that the fifth respondent, the owner of the insured vehicle, had violated the terms of the policy conditions, and hence, to subserve the ends of justice, the appellant can be directed to pay the award amount at the first instance and thereafter recover the same from the fifth respondent, the owner of the insured vehicle, in accordance with law.

9. The appellant, Insurance Company, shall deposit the compensation amount of Rs.4,06,000/- awarded by the Tribunal together with interest at 7.5% per annum from the date of the claim petition (28.04.2016) till the date of realization and costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

10. On such deposit, the first to third respondents/claimants are permitted to withdraw the same as per the apportionment fixed by the

Tribunal along with the proportionate interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

11. The appellant, Insurance Company, is at liberty to recover the compensation from the fifth respondent, the owner of the insured vehicle, as per the guidelines issued by the Hon'ble Supreme Court in the case of **Nanjappa** Vs. **State of Karnataka**, reported in 2015 (1) SCC 550.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

11.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order
JEN

Copy To:
1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Padmanabhapuram,
Kanyakumari District.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court,
Madurai.

SUNDER MOHAN, J.

JEN

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