BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2024

Pronounced on : 14.10.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

C.M.A(MD)No.282 of 2021
and
C.M.P(MD)No.2354 of 2021

The Branch Manager,
The National Insurance Company Limited,
Door No.5A, Sub Collector Office,
Dindigul Town,
Dindigul District. ... Appellant / 2nd Respondent

Vs.

1. Malar
2. Latha
3. Sundaramoorthy
4. Ramar
5. Laxmanan ... Respondents 1 to 5 / Petitioners
6. Pothiraj ... 6th Respondent / 1st Respondent
7. Alagumoorthy ... 7th Respondent / 3rd Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to set aside the award passed the judgment and decree made in

M.C.O.P.No.343 of 2015 dated 30.07.2019 on the file of the Motor Accident Claims Tribunal / Principal District Court, Dindigul.

For Appellant : Mr.N.S.Ramakrishnadass
For R1 to R5 : Mr.S.Mahendrapathy
For R6 : Mr. R.Santhanam

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the judgment and decree made in M.C.O.P.No.343 of 2015 dated 30.07.2019 on the file of the Motor Accident Claims Tribunal / Principal District Court, Dindigul.

2. The case of the claimant is that on 14.11.2014 at about 2.45 p.m., when the deceased Murugesan was riding a two wheeler bearing registration number TN 57 M 5437 on the Batlagundu to Viralipatti main road when he was nearing the place of occurrence a motor cycle bearing registration number TN 57 AA 9058 was driven by its driver in a rash and negligent manner and dashed against the deceased Murugesan. He sustained grievous injury on his head, taken to the Government Hospital, Batlagundu where he was declared to be dead. He was aged about 45 years at the time of occurrence and earning

not less than Rs.9,000/- in agricultural work. Claiming compensation amount of Rs.10 Lakhs, claim petition was filed by the dependants.

3. That was resisted by the insurance company contending that the vehicle involved in the accident bearing registration number TN 57 EE 9058 was a stolen vehicle. A First Information Report in Crime No.791 of 2014 was registered after 39 days of the occurrence by the Dindigul North Police Station. The first respondent did not inform the insurance company about the theft of the vehicle. He did not take any steps to trace the vehicle stolen, so the insurance company is not liable to pay the compensation.

4. So the Tribunal, at the conclusion of the enquiry with regard to the first aspect of negligence, recorded a finding that the occurrence took place because of the rash and negligent driving on the part of the third respondent namely one Alagumoorthy who was specifically impleaded as party respondent. The age of the deceased was fixed at 45 years. The notional income was fixed at Rs.7000/-. 25% was added to the future prospects. The multiplier 14 was taken as per the settled procedure. Finally, loss of dependency was fixed at Rs.11,02,500/-. To that customary amounts were added. Finally the following compensation was awarded by the Tribunal:

Particulars	Rs.
Loss of Dependency	Rs.11,02,500/-
Loss of Estate	Rs. 15,000/-
Loss of Consortium	Rs. 40,000/-
Loss of Love and affection for petitioners	Rs. 50,000/-
Funeral expense	Rs. 15,000/-
Transport expense	Rs. 10,000/-
Total	Rs.12,32,500/-

5. Regarding the liability the Tribunal recorded a finding that eventhough the occurrence said to have taken place due to the rash and negligent driving on the part of the third respondent, but the claimant being the third party should not be affected due to the violation of the policy condition by the first respondent. It is an issue between the first and second respondent in which the claimants are not involved. So the insurance company was directed to pay the compensation.

6. The deposit was already made by the insurance company and against the award of the Tribunal, this appeal is preferred by the insurance company. Contending that the sixth respondent in the appeal who is the first respondent

in the main petition drove the vehicle without any validity. The insured namely the first respondent in the main petition did not give any proper intimation and the condition of theft was also not properly complied. Claim form was not submitted by the insured in time. The seventh respondent is a stranger to the issue. Complaint was given after long time after the occurrence.

7. Per contra, learned counsel for the sixth respondent in the appeal, who is the owner of the offending vehicle and the first respondent in the main petition contends that there is no policy violation. The vehicle was stolen by a third party and caused the accident. The Tribunal is bound by the judgment of the Hon'ble Supreme Court made in *United India Insurance Co. Ltd., Vs Smt.Anita Devi and Others*.

8. Per contra, learned counsel for the appellant would submit that 50% responsibility must be taken by the injured for his negligence and lapses.

9. Regarding the first aspect of negligence, no argument was advanced on either side. The entire appeal is centered around the liability that who

drove the vehicle and whether who was an authorized person and who has stolen the same. Evidence on record must be scrutinized. In the FIR it has been stated that Alagumoorthy who is the third respondent in the main petition was responsible for the accident and he was riding the two wheeler. It is also stated that on enquiry the name of the rider came to their notice. The eye witness to the occurrence P.W.3 has not identified the driver of the two wheeler. So also, the other eye witness P.W.2. The first respondent in the main petition in his evidence stated that on 19.10.2014, he parked his vehicle near the AVM hospital on Dindigul - Palani main road. After attending his relative in the hospital, he returned back. At that time he found his vehicle missing. He lodged a complaint on 23.12.2014 before the Dindigul North police station. A case in Crime Number 795 of 2014 was registered. The third respondent in the main petition Alagumoorthy has involved in many theft cases. He stolen the vehicle and caused the accident. The first respondent submitted a claim form before the insurance company on 17.06.2015. He has admitted during the course of examination that till 14.11.2014, he did not give any complaint. So there is a delay on the part of the owner of the vehicle, in lodging the complaint. The third respondent namely Alagumoorthy did not own proper driving licence also. From the evidence on record, it is seen that the third respondent is an unauthorized rider of the two wheeler. But it is seen that there was no collusion or connivance between the claimant and the third respondent Alagumoorthi. Under these circumstances, whether the finding of the trial Court directing the insurance company to pay the claim amount is the only point to be decided.

10. As stated above, this contention on the part of the owner of the vehicle that as per the judgment of the Hon'ble Supreme Court in *United India Insurance Co. Ltd., Vs Smt.Anita Devi and Others* even inspite of theft of the vehicle, the insurance company is liable to the third party.

11. Learned counsel for the sixth respondent brought the attention of this Court to the judgement of the Hon'ble Supreme Court in United India Insurance Co. Ltd., Vs Lehru and others reported in **(2003) 3 Supreme Court Cases 338**. Subsequent to that another judgment of the Hon'ble Supreme Court in Civil Appeal No.4758 of 2023 in the case of *Ashok Kumar versus New India Assurance Co.Ltd.,* where in a similar situation arose.

12. Before going into the judgment of the Hon'ble Supreme Court, the conditions mentioned in the policy require a study. Section 1 of the Private

Car Package Policy reads that *the company will indemnify the insured against loss or damage to the vehicle insured either by fire or by burglary or theft*. Here, claim form was submitted by the owner of the vehicle but that came to be repudiated by the insurance company setting out certain facts which are not considered here. Conditions for claiming the damage amount is mentioned that notice must be given in writing to the company immediately upon the occurrence. More specifically, the following conditions requires reproduction:-

"In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and co-operate with the Company in securing the conviction of the offender."

13. There is no doubt pertaining to the claim form to be submitted by the owner of the vehicle by claiming insurance amount for loss of the vehicle. But here, the question is whether the insurance company is liable to reimburse the insured in respect of the accident caused by the person who has stolen the vehicle and for that purpose, the judgment of the Hon'ble Supreme Court made in Civil Appeal No.4758 of 2023 in the case of *Ashok Kumar versus New India Assurance Co.Ltd.,* is referred, wherein the Hon'ble Supreme Court has find out that immediately after the occurrence, the insured must have

come in and co-operate with the insurance company for completing the enquiry as the case may be. Here there is a delay of about one month by the insured in lodging the complaint. More particularly, the complaint was given only after the accident.

14. In view of the above conduct on the part of the insured, the insurance company can disown the liability, ofcourse on payment of compensation awarded. The reason being that the deceased is the third party to the vehicle. Violation of the policy condition is between the insured and the insurance company for which the claimant / third party should not made to suffer and this is the settled proposition of law that in case of violation of policy conditions, third party should not suffer and insurance company's right can be protected by way of ordering pay and recovery. But here a mistake has been committed by the Tribunal in ordering recovering the amount from the third respondent in the claim petition, who has stolen the vehicle. This is not proper. Only the insured is responsible, because of the above said lapses.

15. Therefore, this Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is modified to the effect that the appellant /

insurance company is directed to deposit the entire award amount of Rs. 12,32,500/- (Rupees Twelve Lakhs Thirty Two Thousand Five Hundred only) as directed by the Motor Accident Claims Tribunal / Principal District Court, Dindigul and liberty is granted to the appellant herein to recover the same from the insured namely the sixth respondent herein who is the first respondent in the main petition with interest at the rate of 7.5% per annum. Consequently, connected miscellaneous petition stands closed. No costs.

14.10.2024

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

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To

1.The Motor Accident Claims Tribunal / Principal District Court, Dindigul.

2.The Section Officer, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.

G.ILANGOVAN, J.

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Pre-Delivery Judgment made in
C.M.A(MD)No.282 of 2021
and
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