BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **19.02.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).Nos.826 and 827 of 2017
and
C.M.P.(MD).Nos.8901 and 8902 of 2017

C.M.A.(MD).No.826 of 2017

The General Manager,
United India Insurance Company Limited,
No.19, Neela South Street,
Nagapattinam 611 011.

... Appellant

Vs.

1.Kamaraj
2.Muthulakshmi
3.Priyanka
4.Krishnasamy Thevar
5.Shanmugavalli

... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.04.2016 passed in M.C.O.P.No.710 of 2010 on the file of the Motor Accident Claims Tribunal (Additional District and Special Judge), Pudukottai.

For Appellant	:	Mr.G.Prabhu Rajadurai
For R1 to R4	:	Mr.R.Balakrishnan

C.M.A.(MD).No.827 of 2017

The General Manager,
United India Insurance Company Limited,
No.19, Neela South Street,
Nagapattinam 611 011.

... Appellant

Vs.

1.Muthukrishnan
2.Shanmugavalli

... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.04.2016 passed in M.C.O.P.No.713 of 2010 on the file of the Motor Accident Claims Tribunal (Additional District and Special Judge), Pudukottai.

For Appellant	: Mr.G.Prabhu Rajadurai
For R1 to R4	: Mr.R.Balakrishnan

COMMON JUDGMENT

(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN, J.**)

Aggrieved over the award passed by the Motor Accident Claims Tribunal (Additional District and Special Judge), Pudukottai in M.C.O.P.Nos.710 and 713 of 2010, dated 07.04.2016, the present appeals have been filed by the Insurance Company.

2. Since the issue involved in these appeals is one and the same, they have been taken up together and disposed of by this common judgment.

3. The respondents 1 to 4 in C.M.A.(MD).No.826 of 2017 filed the M.C.O.P.No.710 of 2010 on the file of the Motor Accident Claims Tribunal (Additional District and Special Judge), Pudukottai seeking compensation of Rs.15,00,000/- and the first respondent in C.M.A.(MD).No.827 of 2017 filed the M.C.O.P.No.713 of 2010 on the file of the Motor Accident Claims Tribunal (Additional District and Special Judge), Pudukottai seeking compensation of Rs.9,00,000/-.

4. The brief facts of the claimants are that on 06.03.2009, at about 7.00 p.m., when the deceased and the injured claimant in M.C.O.P.No.713 of 2010 were proceeding in a two wheeler towards Manalmelkudi to Kattumavadi Road, near Pillayarthidal Bridge, a Tractor bearing Registration No.TN 50 D 1697 belonging to the fifth respondent came in a rash and negligent manner and dashed against the two wheeler. In the impact, the rider of the two wheeler viz., Dinesh died on the spot and the claimant in M.C.O.P.No.713 of 2010 viz., Muthukrishnan sustained grievous injuries. The jurisdictional police registered a case in Crime No.21 of 2009 for the offences under Sections 279, 338 and

304(A) of I.P.C., and the investigation was completed and the final report was filed before the jurisdictional Magistrate. In the mean time, the claimants filed the above said M.C.O.Ps. seeking compensation.

5. Resisting the claim petitions, the Insurance Company filed a counter affidavit disputing the involvement of vehicle, manner of accident, negligence on the part of the driver of the insured vehicle and the income of the deceased and the injured claimant.

6. Before the Tribunal, on behalf of the claimants, P.Ws.1 to 4 were examined and Exs.P1 to P21 were marked and on behalf of the respondent/Insurance Company, R.Ws.1 to 4 were examined and Exs.R1 to R3 were marked. The Insurance Company specifically contended that the accident was not seen by P.W.2. Hence, there was no eyewitness to the occurrence and the negligence is not proved as per Section 166 of the Motor Vehicles Act. The second contention of the Insurance Company is that the person, who drove the tractor had no licence. After analysing the evidence, the Tribunal held that the driver of the first respondent was responsible for the accident and awarded a sum of Rs.11,99,000/- to the claimants in M.C.O.P.No.710 of 2010 and awarded a sum of Rs.4,45,122/- to the injured claimant in M.C.O.P.No.713 of

2010. Challenging the same, the Insurance Company filed these appeals. Even though they raised a plea about the quantum of compensation awarded by the Tribunal, they restricted their argument relating to negligence and the lability.

7. This Court carefully considered the evidence adduced by the claimants and also the documents adduced by both sides.

(i)Whether the tribunal correctly fixed the negligence on the part of appellant insured Tractor driver?

(ii)Whether the plea of the Appellant Insurance company disowning the liability on account of the fact that the driver of the tractor driving the vehicle without driving licence is correct?

(iii)Whether the plea of the claimant to pay and recover is sustainable or not?

8.Discussion on negligence :

TN 50 D 1697 Mahendra Tractor was insured by the Appellant Insurance Company. On 06.03.2009, the deceased after attaining a function in Manalmelkudi Amman Temple, returned to his village by riding his two-wheeler along the Manalmelkudi-Karaikottai road from South-north direction. The other injured person travelled on the said two-wheeler as pillion rider. The said bike was followed by PW.2 and other villagers. When the two-wheeler of deceased reached near the Pillaiyarthidal bridge, the insured tractor came on the opposite side in a rash and negligent manner and dashed against the two-wheeler of the deceased and sped off from the scene of occurrence. The deceased died on the spot. The pillion rider sustained injuries. The same was witnessed by PW.2 who followed the said vehicle. PW.2 and others admitted the injured in the Hospital. The FIR was registered against the driver of the tractor. PW.2 cogently deposed about the sequence of events without any infirmities. Eventhough, he was subjected to detailed cross-examination, no circumstances were elicited to disbelieve his presence and his testimony. The injured claimant PW.1 also cogently deposed about events and his evidence corroborated with the evidence of PW.2. The Investigating Agency conducted the investigation and filed final report against the driver of the tractor under Ex.P3. No Contra evidence was adduced to disbelieve the cogent and corroborated testimony of the PW.1&2. Hence, this Court concurs with the finding of the Learned Tribunal Judge that the driver of the tractor came on opposite side in a rash and negligent manner and dashed against the deceased two-wheeler.

9.**Discussion on the involvement of Vehicle:**

PW.1&2 as discussed above cogently deposed about the involvement of the tractor bearing registration No. TN 50 D 1697. Immediately after accident, the tractor driver had escaped from the scene of occurrence abandoning his vehicle. The investigating agency also conducted fair investigation and found that the appellant insured tractor was involved in the accident by filing the final report against the driver of the tractor. Even though, Ex.R2 & R3 marked and Rws.1,2,3 and 4 were examined to prove that the vehicle was not involved, the same was not sufficient to disbelieve the evidence of the eye-witness to the occurrence P.W.1 and P.W.2 and the final report filed by the jurisdictional police under Ex.P3 show that the appellant insured vehicle was involved in the occurrence. It is settled principle that the self serving report of the appellant insurance company marked under Ex.R2 is neither admissible nor relevant to decide the involvement of the vehicle as held in the case of ***T.T. Antony v. State of Kerala***, reported in ***(2001) 6 SCC 181 at page 203***

> ***31.*** *In Ram Krishna Dalmia v. Justice S.R. Tendolkar [AIR 1958 SC 538 : 1959 SCR 279] a Constitution Bench of this Court while considering the constitutional validity of the Commissions of Inquiry Act, indicated that the Commission is merely to investigate, record its findings and make its recommendations which are not enforceable proprio vigore and that the inquiry or report cannot be looked upon as judicial inquiry in the sense of its being an exercise*

of judicial function properly so called. The recommendations of the Commission of Inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. It would be appropriate to notice the following observations of the Constitution Bench : ***(AIR p. 547, para 9)***

"But seeing that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective proprio vigore and the statement made by any person before the Commission of Inquiry is, under Section 6 of the Act, wholly inadmissible in evidence in any future proceedings, civil or criminal, there can be no point in the Commission of Inquiry making recommendations for taking any action 'as and by way of securing redress or punishment' which, in agreement with the High Court, we think, refers, in the context, to wrongs already done or committed, for redress or punishment for such wrongs, if any, has to be imposed by a court of law properly constituted exercising its own discretion on the facts and circumstances of the case and without being in any way influenced by the view of any person or body, howsoever august or high powered it may be."

9.1.Even though, the Insurance company had submitted a representation to the Superintendent of Police disputing the involvement of the vehicle, the same was not a ground to record a finding that vehicle was not involved without any final opinion on the basis of the representation. Neither the owner of the vehicle nor the driver of the vehicle took any steps to show that vehicle was falsely implicated in this case. It is well settled in the motor accident claims, the standard of proof is by way of preponderance of the probabilities, rather than the proof beyond reasonable doubt. The Hon'ble Three Judges Bench of the Supreme Court in the case of the ***United India Insurance Co. Ltd. v. Shila Datta***, reported in ***(2011) 10 SCC 509 at page 517***

Nature of a claim petition under the Motor Vehicles Act, 1988

> ***10.*** *A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependent family members) before the Motor Accidents Claims Tribunal constituted under Section 165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It is a proceedings in terms of and regulated by the provisions of Chapter XII of the Act which is a complete code in itself. We may in this context refer to the following significant aspects in regard to the Tribunals and determination of compensation by the Tribunals:*
>
> *(i) Proceedings for award of compensation in regard to a motor accident before the Tribunal can be initiated either on an application for compensation made by the persons aggrieved (the claimants) under Section 166(1) or Section 163-A of the Act or suo motu by the Tribunal, by treating any report of accident (forwarded to the Tribunal under Section 158(6) of the*

Act as an application for compensation under Section 166(4) of the Act).

(ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.

(iii) In a proceedings initiated suo motu by the Tribunal, the owner and driver are the respondents. The insurer is not a respondent, but a noticee under Section 149(2) of the Act. Where a claim petition is filed by the injured or by the legal representatives of a person dying in a motor accident, the driver and owner have to be impleaded as respondents. The claimants need not implead the insurer as a party. But they have the choice of impleading the insurer also as a party-respondent. When it is not impleaded as a party, the Tribunal is required to issue a notice under Section 149(2) of the Act. If the insurer is impleaded as a party, it is issued as a regular notice of the proceedings.

(iv) The words "receipt of an application for compensation" in Section 168 refer not only to an application filed by the claimants claiming compensation but also to a suo motu

registration of an application for compensation under Section 166(4) of the Act on the basis of a report of an accident under Section 158(6) of the Act.

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. On receipt of an application (either from the applicant or suo motu registration), the Tribunal gives notice to the insurer under Section 149(2) of the Act, gives an opportunity of being heard to the parties to the claim petition as also the insurer, holds an inquiry into the claim and makes an award determining the amount of compensation which appears to it to be just. (Vide Section 168 of the Act.)

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry. (Vide Section 169 of the Act.)

(vii) The award of the Tribunal should specify the person(s) to whom compensation should be paid. It should also specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them. (Vide Section 168 of the Act.)

(viii) The Tribunal should deliver copies of the award to the parties concerned within 15 days from the date of the award. (Vide Section 168(2) of the Act.)

We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation for the occurrence of an accident, after due enquiry, in accordance with the statute.

10.The Hon'ble Supreme court in the Paragraph No.15 in the case of ***Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 at page 534*** while deciding the similar question whether the vehicle was involved in the accident or not directed the Courts to take a holistic view:

> ***15.*** *In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the*

High Court should have taken into consideration the respective stories set forth by both the parties.

11. The said principle also reiterated in the case of ***Parmeshwari v. Amir Chand***, reported in **(2011) 11 SCC 635 at page 638**

> ***13.*** *The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2010) 1 SCC (Cri) 1101 : (2009) 5 SCC (Civ) 189] are very pertinent: (SCC p. 534, para 15)*
>
> *"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."*

12. In view of the above discussion, the Learned Tribunal Judge correctly decided the involvement of the appellant insured tractor in the accident happened on 06.03.2009 and the driver of the said insured tractor drove the tractor rashly and negligently and hit the two wheeler of the deceased and this Court finds no perversity in the said findings and therefore affirms the said findings.

13.<u>Decision on the valid Driving licence:</u>

The Learned Counsel for the Insurance Company would submit that, the driver of the tractor drove the tractor at the time of the accident without valid driving licence. To prove the same, RW.1 was examined and licence of the said driver was marked. The driver of the tractor had taken licence only on 20.04.2009 I.e after the accident which happened on 06.03.2009. No evidence was adduced either by the owner of the vehicle or the driver of the vehicle to show that he was holding a valid driving licence at the time of the accident. Therefore, the contention of the Learned counsel for Insurance company is that at the time of the accident, the driver of the tractor had no valid licence is accepted. Hence, the Insurance Company is not liable to pay compensation for the violation of the policy condition and should be exonerated from liability. But, this Court inclines to apply the principle of pay and recovery by accepting the argument of the Learned Counsel for the claimants on the basis of the following precedents: 2004 (3) SCC 297, 2010 ACJ 2046, 2008 ACJ 776, 2007 ACJ 721.

13.1. The Hon'ble Three Member Bench of the Supreme Court in the case of ***National Insurance Co. Ltd. v. Swaran Singh,*** reported in ***(2004) 3 SCC 297 at page 342*** has directed the Insurance Company to pay the amount and recover the same. The relevant portion is as follows:

> *(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.*

13.2. The said principle was followed by the Hon'ble Supreme Court in the case of ***The United India Insurance Co. Ltd., Vs.S. Saravanan (Infirmity), Rep. By his wife NF.S. Lalitha,*** reported in ***2010 ACJ 2046,***

> ***11.*** *This then is the law, that if the breach of a condition under an insurance policy is proved, then the insurance company must pay and may recover. All the subsequent cases are guided by Swaran Singh's case. When the insurance company is exonerated of its liability for breach of policy conditions, it must be understood that the Court/Tribunal may direct in its discretion, the insurer to pay first and decide whether to recover.*

13.3. the Hon'ble Supreme Court in the case of *[Prem Kumari v. Prahlad Dev],* reported in *2008 ACJ 776* has also extended the said principle in the case of fake license.

13.4. The Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. v. Laxmi Narain Dhut, 2007 A.C.J. 721 = 2007-2-L.W. 719(SC),* has applied the pay and recovery and the relevant paragraph is as follows:

> *"41. In view of the above analysis the following situations emerge: (1) The decision in Swaran Singh case has no application to cases other than third-party risks.*
>
> *(2) Where originally the license was a fake one, renewal cannot cure the inherent fatality.*
>
> *(3) In case of third-party risks the insurer has to indemnify the amount, and if so advised, to recover the same from the insured.*

(4) The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act."

14. Considering the above decisions and the facts as seen from the records, the owner has breached the policy condition. At the same time, as far as the third party risk is concerned, the consistent view has been, as can be seen from the above judgments that the insurer must pay the third party and then take a decision whether to proceed against the owner. This is in consonance with the spirit of the Act. It would be the just and reasonable course since the claimant, an intelligent young man, has been reduced to nothing in a moment because of negligence. The continuous care and support he needs must be taken note of. It is virtually a life sentence that has been imposed on the claimant and his wife and his children too - a sentence of lifeless living. The wife has to take care of her husband and nurture him round the clock as he is in a vegetate state. And, to require them to proceed against the owner would be rubbing salt in their raw wounds. We, therefore, feel that we must ask the appellant-insurance company to pay the compensation to the claimant and recover it from the owner for his breach of the policy conditions.

15.Accordingly, the appeal is partly allowed in the following terms:

(i) The impugned award dated 07.04.2016 passed in M.C.O.P Nos.710 of 2010 and 713 of 2010 on the file of the Motor Accident Claims Tribunal (Additional District and Special Judge), Pudukottai is modified with direction to pay the compensation amount mentioned in the said award to the claimants and recover the same from the owner of the vehicle as per the law laid down by the Hon'ble Supreme Court in Case of ***Oriental Insurance Company Ltd., Vs. Nanjappan*** reported in ***2004 (13) SCC 224*** ;

(ii) In view of the submission of the Learned Counsel for the Appellant/Insurance Company that entire award amount has already been deposited, the claimants are permitted to withdrawn the same.

There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

[V.B.S.,J.] & [K.K.R.K.,J.]
19.02.2024

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

1.The Motor Accident Claims Tribunal
(Additional District and Special Judge),
Pudukottai.

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

V.BHAVANI SUBBAROYAN,J.
and
K.K.RAMAKRISHNAN,J.

akv/*sbn*

C.M.A.(MD).Nos.826 and 827 of 2017

Dated:19.03.2024