BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **24.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.701 of 2018
and
C.M.P.(MD)No.8128 of 2018

New India Assurance Company Ltd.,
128A, Thiru.Vi.Ka Road,
Villuppuram. ...Appellant/Respondent No.2

Vs.

1.B.Rajesh Kannan ... Respondent No.1/Petitioner

2.E.Pachavazhi ... Respondent No.2/Respondent No.1

PRAYER**:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order and decree dated 04.01.2016 in M.C.O.P.No.1544 of 2011 on the file of the III Additional Subordinate Judge, (Motor Accident Claims Tribunal), Tiruchirapalli.

For Appellant : Mr.S.Ramesh

For Respondents : Mr.H.Arumugam (R1)
No appearance (R2)

JUDGMENT

The instant appeal has been filed by the Insurance company challenging the finding on liability and quantum of compensation.

2. The first respondent filed a claim petition before the tribunal stating that while he was driving his car on the Dindigul – Manapparai road, a lorry insured with the appellant came in an opposite direction in a rash and negligent manner and dashed against the car, as a result of which, he sustained grievous injuries. The owner of the lorry remained ex-parte before the tribunal.

3. The appellant insurance company filed a counter stating that the accident took place only due to the negligence of the claimant and that the insured vehicle did not have valid fitness certificate and that in any case, the compensation claimed was excessive.

4. Before the Tribunal, the claimant examined as himself PW1 and the doctor as PW2 and marked Ex.P1 to P18. The appellant insurance company examined RW1 and marked Ex.R1. Two documents were marked as Ex.X1 and Ex.X2.

5. The Tribunal, after taking into consideration the oral and documentary evidence, held that the owner of the lorry did not posses valid fitness certificate and determined the compensation at Rs.6,45,274/- and directed the appellant insurance company to pay the compensation and recover the same from the owner of the vehicle.

6. The learned counsel appearing for the appellant insurance company would submit that the absence of fitness certificate would amount to fundamental breach and therefore, the appellant should be absolved of its liability; and that the award of compensation of pay and recovery cannot be sustained and he relied upon the judgment of the Hon'ble Division Bench of this Court in ***CMA.No.781 of 2024***, dated ***27.03.2024***. However, he is unable to point out any infirmity in the quantum of compensation.

7. The learned counsel appearing for the first respondent/claimant relied upon another Division Bench judgment of this Court in the case of ***The Manager, United India Insurance Co. Ltd., vs. Balakrishnan and Others*** reported in ***2013 (2) TN MAC 515 (DB)***, wherein the Division Bench, under similar circumstances, directed the insurance company to

pay the compensation and recover the same, as fitness certificate was in force till one month before the accident. The learned counsel appearing for the first respondent/claimant submitted that in this case, fitness certificate was very much in force till 14.04.2010 and the accident took place on 20.04.2010 and therefore, the said infraction cannot be treated as fundamental breach and the finding of the tribunal directing the appellant insurance company to pay and recover need not be interfered with.

8. The only point for consideration is *'whether the tribunal was right in directing the appellant to pay and recover the compensation from the owner of the vehicle is justified?'*

9. The Division Bench of this Court, in CMA.No.781 of 2024, dated 27.03.2024, no doubt had held that the absence of fitness certificate is a fundamental breach and it would amount to absence of registration and therefore, the insurance company should be absolved of its liability.

10. In the case on hand, it is not a case where there was no fitness certificate. The fitness certificate for the vehicle was valid till

14.04.2010, as per the evidence of PW1. The accident took place in 20.04.2010, six days later. Therefore, the judgment of the Division Bench of this Court in the case of ***The Manager, United India Insurance Co. Ltd., vs. Balakrishnan and Others*** reported in ***2013 (2) TN MAC 515 (DB)*** would be applicable to the facts of the instant case, wherein this Court had directed the insurance company to pay the compensation and recover the same from the owner of the vehicle. The relevant paragraph of the Division Bench Judgment reads as follows:-

> *"8. We find that though there were no valid fitness certificate for the lorry on the date of accident, on a perusal of the evidence on record, it is clear that the Inspector of the insurance company who was examined as R.W.2, has admitted in his cross examination that the Motor Vehicle Inspector has given a report stating that absolutely there is no mechanical defect in the vehicle. Thus the evidence of R.W.2 would show that even on the date of occurrence, the vehicle was found to be fit to run. Moreover, we are of the opinion that the evidence on record would show that the fitness certificate had expired just one month prior to the date of occurrence and the same could be renewed at any time. In this situation, we are of the opinion that since the vehicle was covered by insurance on the date of accident, the insurance company cannot deny the payment of compensation in respect of the claim made by the third parties. So far the third party claims are concerned, the insurance company can pay the compensation*

amount and recover the same from the owner of the vehicle. In view of the above discussions, we are of the view that since on the date of accident there is no valid fitness certificate, the insurance company can pay the compensation and recover the same from the owner of the vehicle"

11. In this case also, there is no evidence to show that the lorry was not in a fit condition to ply on the road and that the fitness certificate was valid till six days before the accident. Therefore, This Court is of the view that the finding of the tribunal directing the appellant insurance company to pay the compensation and recover the same from the owner of the vehicle is justified and hence, the award of the Tribunal is confirmed.

12. The appellant insurance company is directed to deposit the compensation of Rs.6,45,274/- (Rupees Six Lakhs Forty Five Thousand and Two-Seventy Four only) together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

13. On such deposit, the first respondent/claimant is entitled to withdraw the aforesaid amount together with proportionate interest and costs, less the amount already withdrawn, if any, by filing an appropriate application before the Tribunal.

14. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.10.2024

Index : Yes / No
Neutral Citation : Yes / No

TO:-

1.The III Additional Subordinate Judge,
(Motor Accident Claims Tribunal), Tiruchirapalli.

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

SUNDER MOHAN, J.

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Judgment made in
C.M.A(MD)No.701 of 2018

Dated: 24.10.2024