THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.781 of 2024
and
C.M.P.No.7285 of 2024

The Commissioner,
Tiruppur Municipality,
Tirupur – 641 601. ... Appellant

Vs.

1.K.Marayammal

2.P.Duraisamy

3.The New India Assurance Co. Ltd.,
Post Box No.47,
Kumaran Shopping Complex,
Kumaran Road, Tiruppur – 641 601. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 08.03.2023 made in MCOP.No.1625 of 2016 on the file of the learned Motor Accident Claims Tribunal, Tirupuur.

For Appellant : Mr.D.R.Arun Kumar

For R1 : Mr.P.Dinesh Kumar
for K.Myilsamy for R1

For R3 : Mr.S.P.Chockalingam

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J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.)**

The Municipality, which is the owner of the offending lorry is on appeal, aggrieved by the award of a sum of Rs.16,96,000/- for the death of one Murugesh @ Murugesan in a road accident that took place on 04.08.2016 at about 1.45 p.m.

2. The sole claimant, who is the paternal grandmother of the deceased sought for a compensation for the death of the said Murugesan contending that the parents of the deceased had pre-deceased him and she has been declared as the legal heir of the deceased in O.S.No.35 of 2017 on the file of the District Munsif Court, Kodumudi vide judgment and decree dated 28.11.2017. She had also contended that she was depending on the deceased, he being the only earning member in the family. The claim for compensation was quantified at Rs.45,00,000/- and the same was justified

by claiming that the deceased was earning Rs.20,000/- through his avocation as a Company labour.

3. Narrating as to how the accident occurred the claimant submitted that on 04.08.2016 at about 1.45 p.m, when the deceased Murugesan was travelling as a pillion rider in the motorcycle bearing Reg.No.TN-47-W-1924 in front of Kasipalayam, Sri Karupparayan Kovil, from the North to South direction, the Municipal lorry bearing Reg.No.TN-39-AJ-5278 driven by its driver in a rash and negligent manner came from behind and hit against the two-wheeler, in which the deceased was travelling. As a result of the impact, the deceased was thrown off the vehicle and he died instantaneously.

4. The Municipality resisted the claim contending that the accident did not occur in the manner suggested by the claimant and the deceased was responsible for the accident. It was the case of the Municipality that the lorry was parked for loading the garbage, the deceased drove the motorcycle in a rash and negligent manner and dashed against the lorry from behind.

5. The Insurance Company apart from resisting the claim on merits, contended that since the lorry in question which was insured with it did not have a valid fitness certificate, it ought not to have been on the road, therefore in view of Section 39 read with Section 56 of the Motor Vehicles Act, there being a statutory violation of the policy condition, the Insurance Company cannot be made liable.

6. The Tribunal rejected the claim of the Municipality on negligence and held that the accident occurred due to the rash and negligent driving of the lorry. It based its conclusion on negligence on the FIR, charge sheet, the observation magazar and rough sketch, which were marked as Exs.P1 to P4. The Tribunal dis-believed the evidence of RW2, the driver of the lorry.

7. On the liability of the Insurance Company, the Tribunal concluded that since this vehicle did not have a fitness certificate, the Insurance Company was not liable to pay the compensation. On the said conclusion while exonerating the Insurance Company, the Tribunal awarded a sum of Rs.16,96,200/- adopting the notional income at Rs.11,000/-, adding 40% towards future prospects, deducting one half towards his personal expenses

and awarding a sum of Rs.33,000/- towards funeral expenses and loss of estate at Rs.16,500/- under each heads. Thus, the total compensation was awarded at Rs.16,96,200/-. Aggrieved, the Municipality is on appeal.

8. We have heard Mr.D.R.Arun Kumar, learned counsel appearing for the appellant, Mr.P.Dinesh Kumar, learned counsel appearing for the 1st respondent and Mr.S.P.Chockalingam, learned counsel appearing for the 3rd respondent.

9. Mr.D.R.Arun Kumar, learned counsel appearing for the appellant/ Municipality would vehemently contend that the quantum of compensation awarded is excessive, inasmuch as the Tribunal has assumed the notional income at Rs.11,000/- per month for the accident that has taken place in the year 2016. According to him, anything between Rs.8,000/- and Rs.10,000/- should have been the notional income. On the liability, the learned counsel would submit that the absence of fitness certificate for a temporary period will not absolve the Insurance Company from its liability to indemnify the insured. The learned counsel would draw our attention to the judgments of the Division Bench of Karnataka High Court in ***Dr.Narasimulu Nandini***

Memorial education Trust Vs. Banu Begum and others made in ***Miscellaneous First Appeal No.202022/2016*** and ***Nithya Venkatesh and others Vs. National Insurance Co. Lt.d, and another*** made in ***MFA.No.5993 of 2015 (MV).***

10. Contending contra Mr.P.Dinesh Kumar, learned counsel appearing for the claimant would submit that assumption of Rs.11,000/- as monthly income in the year 2016 itself is too low. He would point out that the deceased was a resident of Tirupur, where there are so many industries, particularly knitting industries with huge opportunities for employment and labour force was always in demand. Therefore, he would also require us to take judicial notice of the fact that Tirupur is one of the Industrial Towns and heart of knitting Industry and the labourers are paid more. He would also point out that no amount was awarded under the head of loss of love and affection for the grandmother.

11. Mr.S.P.Chockalingam, learned counsel appearing for the 3rd respondent/ Insurance Company would submit that in view of the provisions of Section 56 and Section 39 of the Motor Vehicles Act a vehicle which

requires the fitness certificate ought not to be put on road without it. This violation is a fundamental breach of the policy condition, which would absolve the Insurance Company of its liability. The learned counsel would also point out that this Court in ***V.Ranganayaki Vs. A.Praveen and others*** made in ***CMA.No.113 of 2015*** decided on ***04.11.2020*** concluded that it is the duty of the owner of the vehicle to comply with all the statutory requirements and any breach thereof would absolve the Insurance Company.

12. The learned counsel would also draw our attention to the judgment of the Hon'ble Supreme Court in ***Amrit Paul Singh and othes Vs. Tata AIG General Insurance Co. Ltd. And others*** reported in ***AIR 2018 SC 2662.*** He would further submit that the Hon'ble Supreme Court after examining the provisions of the Motor Vehicles Act concluded that use of vehicle in a public place without permit is fundamental statutory infraction and the same cannot be equated with the absence of license or fake license or license for different kind of vehicle. The learned counsel would point out that the Hon'ble Supreme Court had made a distinction between the fundamental statutory infraction and a regular infraction of the Rules, in order to sustain the conclusion of the High Court that the Insurance

Company is absolved of the liability when there is a fundamental statutory infraction.

13. We have considered the rival submissions.

14. On the contentions of the learned counsel on either side, the following points arise for determination in this appeal:

1) Whether the quantum of compensation is just and reasonable.

2) Whether the Tribunal was right in absolving the Insurance Company of the liability.

Point No.1:-

15. On the first point we do not think the appellant has made out a case for interference. The deceased was aged about 22 years. His parents had died ahead of him. He was residing with his grandmother and supporting her. As we had already pointed out the deceased was living in Tirupur, which is an Industrial Town, known for knitting industry and wages in Tirupur are always higher than wages in other places. The accident occurred in 2016. Therefore, we are not able to fault the Tribunal for fixing

the monthly notional income at Rs.11,000/- and adding 40% toward future prospects. One half of the income has been deducted towards personal expenses, which is also in tune with the decision of the Hon'ble Supreme Court. Though the Tribunal has granted Rs.16,500/- each towards funeral expenses and loss of estate, it has not granted any amount towards loss of love and affection. We therefore do not think we can interfere with the quantum of compensation.

Point No.2:-

16. On the second point regarding liability of the Insurance Company, we find that the fact that the vehicle did not have a fitness certificate on the date of the accident is admitted. If we are to look at the consequence of the absence of the fitness certificate, Section 56 provides the consequence and it reads as follows:-

> ***56. Certificate of fitness of transport vehicles.*** *- (1) Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the*

prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:

Provided that where the prescribed authority or the authorized testing station refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.[Provided further that no certificate of fitness shall be granted to a vehicle, after such date as may be notified by the Central Government, unless such vehicle has been tested at an automated testing station.]

(2) The "authorised testing station" referred to in sub-section (1) means any facility, including automated testing facilities, authorised by the State Government, where fitness testing may be conducted in accordance with the rules made by the Central Government for recognition, regulation and control of such stations.

(3)Subject to the provisions of sub-section (4), a certificate of fitness shall remain effective for such period as may be prescribed by the Central Government having regard to the objects of this Act.

(4)The prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies

with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter V shall be deemed to be suspended until a new certificate of fitness has been obtained:[Provided that no such cancellation shall be made by the prescribed authority unless,

-(a)such prescribed authority holds such technical qualification as may be prescribed by the Central Government and where the prescribed authority does not hold the technical qualification, such cancellation is made on the basis of the report of an officer having such qualification; and

(b)the reasons recorded in writing cancelling a certificate of fitness are confirmed by an authorised testing station chosen by the owner of the vehicle whose certificate of fitness is sought to be cancelled:Provided further that if the cancellation is confirmed by the authorised testing station, the cost of undertaking the test shall be borne by the owner of the vehicle being tested and in the alternative by the prescribed authority.]

(5)A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India.

(6) All transport vehicles with a valid certificate of fitness issued under this section shall carry, on their bodies, in

a clear and visible manner such distinguishing mark as may be prescribed by the Central Government.

(7)Subject to such conditions as the Central Government may prescribe, the provisions of this section may be extended to non-transport vehicles.

17. Section 39 of the Motor Vehicles Act, which provides for registration of the motor vehicles reads as follows:-

39. Necessity for registration. - No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

18. Section 56 provides that a transport vehicle shall not be deemed to be validly registered for the purpose of Section 39 unless it carries a

certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed Authority, or by an authorized testing station. The consequence of absence of fitness certificate is very serious, which goes to the extent of nullifying the registration of the vehicle, since the vehicle without fitness certificate is deemed to have been not registered at all.

19. If we are to look at Section 39 which speaks about the necessity of registration, we find that there is a clear bar on persons using vehicles without registration on public roads. Therefore, as pointed out by the Hon'ble Supreme Court in ***Amrit Paul Singh and othes Vs. Tata AIG General Insurance Co. Ltd. And others*** referred to *supra,* violation is a fundamental statutory refraction.

20. The Hon'ble Supreme Court after referring to the provisions of Section 66 which deal with the permit which after referring to the judgment in ***National Insurance Co. Ltd., Vs. Swaran Singh and others*** reported in ***(2004) 3 SCC 297,*** concluded that if it is a fundamental statutory infraction then the Insurance Company is absolved of its liability and therefore there

cannot be even a direction to the Insurance Company to pay the compensation with liberty to recover it. After discussing other judgments on the issue the Hon'ble Supreme Court observed as follows:-

> ***24.*** *In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and Lakhmi Chand [Lakhmi Chand v. Reliance General Insurance,*

(2016) 3 SCC 100 : (2016) 2 SCC (Civ) 45] in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and other cases pertaining to pay and recover principle.

21. No doubt, the Karnataka High Court has taken a slightly different view, wherein, it has been held that absence of permit will not absolve the liability of the Insurance Company. From a perusal of the judgment of the Karnataka High Court, we find that the attention of the Court was not drawn to the judgment of the Hon'ble Supreme Court in ***Amrit Paul Singh and others Vs. Tata AIG General Insurance Co. Ltd. And others*** referred to

supra. We are therefore unable to persuade ourself to agree with the view expressed by the Karnataka High Court in the two decisions referred to by the appellant. We therefore do not see any reason to interfere with the award of the Tribunal.

22. The appeal therefore fails and it is accordingly **dismissed**. The Municipality has four (4) weeks time to deposit the compensation. On such deposit it shall be paid over to the 1st respondent claimant. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) **(R.S.V., J.)**
27.03.2024

dsa

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order

To

The Motor Accident Claims Tribunal,
Tirupuur.

R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

dsa

C.M.A.No.781 of 2024

27.03.2024