IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.124 of 2015

Mrs.Pechiammal ... Appellant/Petitioner

vs.

1.Suresh
2.The Oriental Insurance Co.Ltd.,
Siva Complex, Second Floor,
No.22/C/Sarada College Road,
Salem. ... Respondents/Respondent

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree dated 29.08.2011 passed in M.C.O.P.No.119 of 2008, on the file of the Motor Accident Claims Tribunal/Subordinate Court, Attur.

For Appellant : Mr.L.Rajendran

For 2nd respondent: Mr.M.Bharathi
for M/s.S.Manohar

JUDGMENT

This Appeal is directed against the Judgment and Decree dated 29.8.2011 in MCOP No.119 of 2008 passed by the Motor Accident Claims Tribunal/Subordinate Court, Attur.

2. On 22.9.2007, at about 7.00 p.m., when the appellant was going home by foot in the left side of the East West Road, near Kottavadi Sandai Pettai, the first respondent's brother, namely, periasamy, driving the TVS Star City Vehicle bearing Reg.No.TN 30 Q 2210 came rashly and negligently and dashed against the appellant and thereby, she was thrown out and in the impact, she sustained injuries all over her body and lacerated wound in her right leg and contusion in her right wrist. She took treatment in Government Mohan Kumara Mangalam Medical College from 23.9.2007 to 29.1.2008 as inpatient. The appellant underwent ortho surgery and steel plate was fixed in her right leg. The appellant was discharged from hospital on

29.1.2008. Though the appellant claimed Rs.5,18,300 as loss, she restricted her claim to Rs.5,00,000/-. However, on appreciation of pleadings and evidence, the Tribunal awarded a sum of Rs. 1,41,170/- with interest at the rate of 7.5% from the date of petition till the date of realisation and costs.

3. The learned counsel appearing for the appellant/claimant would submit that though the Tribunal passed award in favour of the claimant/appellant holding that the driver of the offending vehicle was negligent in driving the vehicle, it failed to direct the second respondent Oriental Insurance Company to pay the award amount though it has been properly established that the offending vehicle involved in the accident was insured with the second respondent. According to the learned counsel, the principle of pay and recovery ought to have been applied by the Tribunal while passing the award following the ratio laid down by the Apex Court in Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others reported in 2004 (2) CTC 464. Ironically, the Tribunal has not done so, therefore, he prays that this Court may pass an order directing the second respondent Insurance Company to deposit the award amount and recover the same from the first respondent thereafter.

4. On the other hand, the learned counsel appearing for the second respondent/Insurance Company would submit that the driver of the offending vehicle was not having valid driving licence. Therefore, the Tribunal was right in passing the award without fastening the liability on the Insurance Company.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

6. This Court is unable to find any merit in the objection raised by the learned counsel appearing for the second respondent/Insurance Company. It is a well settled position that the Insurance Company cannot be absolved from their liability when the offending vehicle is insured with it. In the present case, the insurance poly Ex.R1 shows the insurance coverage, therefore, the Tribunal ought to have directed the Insurance Company to deposit the award amount and thereafter, recover the same from the owner of the offending vehicle in the execution proceedings even without filing a suit.

7. In this context, it is relevant to extract the relevant portion of the judgment of the Apex Court in the case of Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others reported in 2004 (2) CTC 464 wherein it has been held as follows:-

"7. The view of the High Court cannot be maintained in view of what has been stated in New India Assurance Co.Ltd., Vs. Asha Rani [2003(4)SCC223] and Oriental Insurance Co.Ltd., v. Devireddy Konda Reddy [2003 (2) SCC 339]. To that extent the judgment of the High Court is unsustainable. At the same time, the observations of this Court in M/s.National Insurance Co.Ltd., v. Baljit Kaur and others [2004 (1) 210] also need to be noted. In para 21 of the judgment, it was observed as follows:-

> "The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in New Delhi Assurance Company v. Satpal Singh and others [2000 (1) CTC 370]. The said decision has been overruled only in Asha Rani (Supra). We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for insurer to file a separate suit but it may initiate a proceeding before the executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the

> Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as putforth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding."

8. Therefore, while setting aside the judgment of the High Court, we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned, Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment of the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

8. In view of the aforesaid judgment, this Court directs the second respondent Insurance Company to deposit the award amount before the Tribunal and recover the same from the owner of the vehicle in terms of the decision of the Hon'ble Apex Court in Oriental Insurance Company Ltd., vs. Shri Nanjappa and others reported in 2004 (2) CTC 464. It is made clear that the second respondent/Insurance Company is directed to deposit the entire award amount with interest within a period of four weeks from the date of receipt of a copy of this order as to enable the claimant to withdraw the same. Accordingly, the Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//
Sub Assistant Registrar

asvm

To
The Motor Accident Claims Tribunal/
Subordinate Court, Attur.

+1 cc to Mr.L.Rajendran, Advocate, sr.65842
+1 cc to Mr.S.Manohar, Advocate, sr.65780

C.M.A.No.124 of 2015

tej co
kra 04.03.2016