

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2948 of 2014

and

M.P.No.1 of 2015

M/s.Iffco Tokio General Insurance Co.Ltd.,
Thulasi Chambers, III Floor,
No.195, T.V.Swamy Road (West),
R.S.Puram, Coimbatore 641 002.

... Appellant

Versus

1.Shanthi
2.P.Kalimuthu
3.K.Thamaraiselvi
4.S.Sivadeenadayalan
5.T.Ramamoorthy
6.Thangamani
7.Masilamani
8.Sundaramoorthy
9.Sethu Moorthy

.... Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree in MCOP No.566 of 2011 dated 11.07.2013 on the file of the Motor Accident Claims Tribunal, V Additional District & Sessions Court, Coimbatore.

For Appellant : M/s.C.Harini
for M/s.M.B.Gopalan

For Respondents : Mr.K.G.Vasudevan for R1 to R3
Mr.K.S.Karthick Raja for R6 to R9

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J U D G M E N T

This civil miscellaneous appeal is directed against the impugned award passed by the learned Motor Accident Claims Tribunal cum V Additional District and Sessions Court, Coimbatore in MCOP No.566 of 2011 dated 11.07.2013 for the fatal head injuries suffered by the victim in the accident that took place on 08.04.2010 at about 12.30 p.m., while riding as a

pillion. Since the deceased died at the age of 21 years as a bachelor, his parents filed a claim petition claiming a sum of Rs.30,00,000/- under various heads. But the learned Tribunal considering the case of both sides finally awarded a sum of Rs.10,31,500/- under the following heads:

i)	Loss of love and affection	-	45,000
	(at the rate of Rs.15,000/- for each claimant)		
ii)	Medical Expenses	-	9,500
iii)	Loss of income	-	9,72,000
iv)	Funeral expenses	-	5,000

	Total	-	10,31,500

2.Since the above said amount has been directed to be paid by the Insurance Company, the present appeal has been filed by them on the ground that the learned Tribunal committed a serious mistake in not applying the principle of "pay and recover" for the simple reason that when the deceased was travelling as a pillion rider in the Bajaj Pulsor (150) bearing Registration No.TN37 BB 1218 driven by one Siva Deenadayalan at about 12.30 p.m. from SIHS colony to Ondipudur Sungam, on the fatal day, the said Deenadayalan, on seeing the speed breaker at the last moment, lost his control and suddenly applied the brake. Due to the said impact only, the deceased was thrown out of the vehicle and he lost his consciousness. Therefore, the learned Tribunal ought to have concluded that the negligence was only on the part of Siva Deenadayalan, who drove the vehicle in a rash and negligent manner. Learned counsel for the Insurance Company would further submit that in the case of Oriental Insurance Company Ltd., Shri Nanjappan and others, reported in (2004 (2) CTC 464), the Hon'ble Apex Court has held that the principle of "pay and recover" should be ordered in favour of the insurance company for the purpose of recovering the same from the owner of the vehicle. Since this principle has also not been followed by the Tribunal, she pleaded for application of the principle of "pay and recover" alone, as she has no grievance with regard to the quantum and liability.

3.This court finds merits on the submissions made by the learned counsel for the Insurance company. Accordingly, this court, finding that the learned Tribunal has failed to apply the principle of "pay and recover" as against the owner of the vehicle bearing Registration No.TN37BB1218, as per the ratio laid down by the Apex Court in Nanjappan Case (supra), is inclined to grant liberty to the appellant to recover the same from the legal heirs of the deceased owner by issuing notice in the manner known to law.

4. In this context, it is relevant to refer to the judgment of the Apex Court in the case of Oriental Insurance Co. Ltd., v. Shri Nanjappan and others (2004 (2) CTC 464), wherein the Apex Court, following the observations made in M/s. National Insurance Company Limited v. Baljit Kaur and others [2004 (1) CTC 210], held that the Insurer shall pay the quantum of compensation fixed by the Tribunal applying the principle of "pay and recover", as follows:

" 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 realization 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."

5. In view of the above, this Court while confirming the award, directs the Insurance Company to pay the award amount together with interest to the claimants and thereafter, recover the same from the legal heirs of the owner of the vehicle on the

basis of the aforementioned principle of "pay and recover" enunciated by the Apex Court.

6.In the result, the civil miscellaneous appeal is disposed of with the above direction. Consequently, M.P.No.1 of 2015 is closed permitting the respondents/claimants to move appropriate application before the Tribunal for withdrawing the entire amount together with interest. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vri

To

The V Additional District and Sessions Court,
Motor Accident Claims Tribunal,
Coimbatore.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.K.G.Vasudevan, Advocate, S.R.No.65064

+lcc to Mr.M.B.Gopalan, Advocate, S.R.No.65229

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C.M.A.No.2948 of 2014

SVI (CO)
CA(28/03/2016)

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