IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2015

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

C.M.A. No.852 of 2009

1. Krishnavani
2. Minor Santhiya
3. Minor Manikandan
4. Minor Saranya
5. Kamala

(Minor petitioners 2 to 4 are rep. by their Mother & Next Friend Krishnavani) ... Appellants/Petitioners

Versus

1. C.Perumal ...1st Respondent/2nd Respondent

2. The Oriental Insurance Company Limited, Katpadi Road, Vellore, Vellore District. ...2nd Respondent/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.07.2006, made in M.C.O.P.No. 598 of 2004 by the Fast Track Court (Additional District & Sessions Judge, Tirupattur.

For Appellants : Mr.N.Nallappan

For Respondent-2 : Mr.S.Manoharan

For Respondent-1 : No appearance

JUDGMENT

The Claimants who are the Legal Representatives of the deceased, have come up with the present appeal against the award dated 19.07.2006, made in M.C.O.P.No. 598 of 2004 by the the Fast Track Court (Additional District & Sessions Judge, Tirupattur, in and by which the learned Tribunal awarded a sum of Rs.3,15,000/- against the owner of the offending vehicle ignoring the Insurance Company, as a result of which, the Legal Representatives of the deceased-breadwinner of their family, are not even able to recover the said amount from the owner of the vehicle.

2. On 14.03.2004 at about 11 A.M., near Parambattu-Sagadevan Vattam main road, the driver of the tractor bearing Registration No.TN 23/K 3933 belonging to the first respondent had driven the said vehicle in a rash and negligent manner and dashed against one Murugan, while he was walking on the extreme left side of the road on the same direction. Due to impact he had sustained grievous injuries. Immediately after the accident, he was taken to Government Hospital, Tirupattur for treatment, but he died on the way to the hospital. The claimants-Legal Representatives of the deceased-breadwinner of their family, filed M.C.O.P.No.598 of 2004 on the file of the Fast Track Court (Additional District & Sessions Judge, Tirupattur, claiming a sum of Rs.5,00,000/- on various heads. The learned Tribunal awarded a sum of Rs.3,15,000/- against the owner of the offending vehicle ignoring the Insurance Company, as a result of which, the Legal Representatives of the deceased who are not even able to recover the said amount from the owner of the vehicle, have come up with the present appeal.

3. The learned counsel for the appellant would submit that the learned Tribunal ought to have applied the principles of pay and recover. The learned Tribunal while passing the award for a sum of Rs.3,15,000/-as against the owner of the offending vehicle-first respondent, has committed a serious error in holding that the Insurance Company is not liable to pay the compensation amount on the ground that the driver did not have valid licence to drive the vehicle. Adding further, the learned counsel would submit that the claimants who are wife, son, daughters and mother of the deceased had made a reasonable claim of Rs.5,00,000/- for the loss of life of the breadwinner of their family. The learned Tribunal while awarding a sum of Rs.3,15,000/- has committed yet another mistake in exonerating the Insurance Company from paying the compensation amount to the claimants. As a result, the owner of the vehicle has not come forward to pay the award amount, it amounts to denial of the compensation. Taking support from the judgment of this Court in the case of United India Insurance Company Limited v. S.Saravanan [(2009) 5 MLJ 715] (infirmities), the learned counsel would submit that as far as the third party risk is concerned, this Court has taken a consistent view that the insurer must pay the third party and then take a decision to proceed against the owner. This is in consonance with the spirit of the Act. The learned Tribunal failed to apply the said principle. Therefore, it would be just and reasonable to apply the principles of pay and recover as against the Insurance Company since the Insurance Company cannot escape from the third party liability.

4. The learned counsel appearing for the Insurance Company opposing the above prayer would submit that when there is a clear and cogent findings given by the learned Tribunal holding that the driver of the offending vehicle who is also son of the owner of the offending vehicle has been held responsible for the

cause of the accident due to rash negligent driving of the vehicle, as a result, the unfortunate accident had happened, taking away the life of the deceased, the owner of the vehicle has no other option except to pay the compensation amount for the loss caused to the claimants' family.

5. But this Court is not able to see any merit in justifying the arguments advanced by the learned counsel for the Insurance Company. As far as the third party liability is concerned, as rightly contended by the learned counsel for the appellants a consistent view had already been taken by a Division Bench of this Court in the case of United India Insurance Company Limited v. S.Saravanan [(2009) 5 MLJ 715], that the insurer must pay the third party and then take a decision to proceed against the owner. In this beck ground it is necessary to extract the relevant portion of the judgment of the Division Bench of this Court in the case of United India Insurance Company Limited v. S.Saravanan (2009) 5 MLJ 715, which is given as under.

> "19. In 2008 A.C.J. 1928 [Oriental Insurance Co. Ltd. vs. Zaharulnisha], the driver had license to drive a heavy motor vehicle, but he was driving a two wheeler when the accident occurred. The Supreme Court held that since the driver had a license for a totally different class of vehicle than the one he was driving, it was in violation of Section 10(2) of the Act. In that case, the Supreme Court held that the insurance company was not liable, but ordered the insurance company to pay and recover the same from the owner of the vehicle.
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> 20. In 2008 A.C.J. 2654 [Ram Babu Tiwari vs. United India Insurance Co. Ltd.], the accident took place on 21. 1996 and the driver did not possess a valid license. Therefore, the Supreme Court dismissed the appeal against the insurance company.
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> 21. In 2008 (2) T.N. M.A.C. 508 (SC) [United India Insurance Co. Ltd.], the vehicle involved in the accident was driven by a minor aged 15. The appeal filed by the insurance company was allowed and the Supreme Court directed the appellant-Insurance Company therein to recover the amount from the owner of the vehicle. In the present case, it is clear that the person who was driving the motorcycle had no license on the date of the accident. In fact, even the learners license was obtained only after the accident occurred.
> Therefore, there was clearly a breach of the policy conditions.
>
> 22. 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, 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 only just and reasonable course since the claimant, an intelligent young man, has been reduced to nothing in one moment 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 living death on the claimant, and a life sentence on the wife, to care and nurture for 24 hours a dear husband, who is no more than a vegetable now. 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."

6. In a similar circumstances, the Apex Court also in the case of Oriental Insurance Co. Ltd., v. Shri Nanjappan and others (2004 (2) CTC 464), 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 principles 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 lnot 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."

7. In view of the above, this Court finds that the claimants have not challenged the quantum of compensation awarded by the learned Tribunal, hence is inclined to allow the appeal by directing the Insurance Company to pay the award amount together with interest and costs to the claimants and recover the same from the first respondent owner of the vehicle on the basis of the aforementioned principles of pay and recover.

8. In the result, this Civil Miscellaneous Appeal stands allowed. The Insurance Company-second Respondent is directed to pay the award amount together with interest and costs to the claimants and recover the same from the first respondent owner of the vehicle on the basis of the aforementioned principles of pay and recover. As regards the amount of compensation as apportioned to the minor claimants 2 to 4 by the learned Tribunal is concerned, the said amount shall be deposited in a Nationalised Bank in Fixed Deposit till they attain majority and the interest accrued from such Fixed Deposit shall be permitted to be withdrawn by the mother of the minors for the welfare of the minors. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Additional District & Sessions Judge,
(Motor Accidents Claims Tribunal),
Fast Track Court, Tirupattur.

+1cc to Mr.N.Nallappan, Advocate, S.R.No.65682
+1cc to Mr.S.Manoharan, Advocate, S.R.No.65617

C.M.A.No.852 of 2009

RSK(CO)
CA(12/02/2016)