



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.10.2015

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.M.A. (MD) No.1151 of 2015

and

M.P.(MD) No.1 of 2015

ICICI Lombard General Insurance Co., Ltd.,

Trichy

rep.by its Manager

No.5, 3rd Floor, United Arcade

Annamalai Nagar

Karur Bye Pass Road

Tiruchirappalli

... Appellant / 2nd Respondent

-vs-

1.Ahamed Salim

2.Mohamed Yusuf

3.Anisha

4.Asmath

5.Asfiya

... Respondents 1 to 5 / Petitioners

6.Bismillahhan

... 6th Respondent / Respondent - 1

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the fair and decreetal, order, dated 12.09.2013, made in M.C.O.P.No.451 of 2009, on the file of Motor Accident Claims Tribunal (Sub Court), Pattukkottai.

For Appellant : Mr.S.Srinivasaraghavan

JUDGMENT

This is an insurer's appeal on the aspect of liability.

2. As a short point alone is involved, we shall dispose of this appeal today at the admission stage itself.

3. On 29.10.2007, in a road accident, the sole breadwinner of the claimants had lost his life. His dependants claimed compensation before the Motor Accident Claims Tribunal.

4. The Tribunal, appreciating the evidence, held that the accident was due to the rash and negligent driving of the rider of the sixth respondent's motorcycle, which has been insured with the appellant and awarded Rs.4,60,000/- as compensation.

<https://hcservices.ecourts.gov.in/hcservices/>

5. The learned counsel for the appellant would submit that the evidence of R.W.1 / Junior Assistant, Road Transport Office, clearly



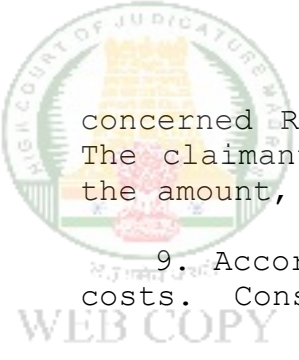
shows that at the time of accident, the rider of the sixth respondent's vehicle was not holding driving licence, thus there is violation of terms and conditions of the policy and in the circumstances, the insurer is not liable to the award amount.

6. In *Oriental Insurance Co. Ltd., v. Shri Nanjappan and others* (2004 (1) TN MAC (SC) 211), the Hon'ble Apex Court held as under:

"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 respondent-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 a 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 to 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. The principle behind this 'pay and recover' is to see that the injured or the dependents of the deceased in a road accident should not be allowed to go in high and dry with a paper (award) decree in their hands. On the other hand, while directing the Insurer to pay the compensation, it is to see that the Insurance Company shall not suffer so enabling it to recover the amount from the vehicle owner.

8. In the circumstances, the appellant will deposit the entire award amount, including the costs and interest, to the credit of M.C.O.P.No.451 of 2009, on the file of the Motor Accident Claims Tribunal / Sub Court, Pattukottai, within four weeks from the date of receipt of a copy of this Judgment, less amount, if any already deposited. On such deposit, the appellant is entitled to proceed in execution as against the vehicle owner, without filing a separate suit. The appellant will have all the remedies available under Order XXI C.P.C. It can also seek remedy as against the offending vehicle. On the request of the Company, the



concerned Regional Transport Officer shall render necessary assistance. The claimants shall be paid the entire amount, as per the allocation of the amount, less amount, if any already received.

9. Accordingly, this civil miscellaneous petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writ)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge,
Thanjavur.
2. The Motor Accident Claims Tribunal,
(Subordinate Judge)
Pattukottai.

Copy To:-
The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO M/S.SRINIVASA RAGHAVAN, ADVOCATE IN SR NO. 60367

KRK

TE/GSV-PM/ : 28/10/2015 : 3P/5C

C.M.A. (MD) No.1151 of 2015
and

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12.10.2015