BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A.(MD)No.630 of 2015
and
M.P.(MD).No.2 of 2015

The New India Assurance Co. Ltd.,
through its Divisional Manager.
163, M.G.Puram
Perambalur,
Perambalur District. .. Appellant/2nd Respondent

Vs

1.Karunanithi .. Respondent/Claimant

2.Karthikeyan .. Respondent/ 1st Respondent

Prayer:- Appeal filed under Section 173 of Motor Vehicle Act, against the award dated 19.06.2013 made in M.C.O.P.No.332 of 2008 on the file of the Motor Vehicle Accident Claims Tribunal (III Additional Sub Court), Tiruchirappalli.

For Appellant : Mr.B.Rajesh Saravanan

For R1 : Mr.N.Sudhagar Nagaraj

For R2 : No appearance

JUDGMENT

Challenging the award of the Motor Accident Claims Tribunal dated 19.06.2013 made in the Claim Petition in M.C.O.P.No.332 of 2008, on the file of the Motor Accident Claims Tribunal (III Additional Subordinate Court), Tiruchirappalli, the New India Assurance Company Ltd., who is the second respondent in the claim petition has filed this appeal.

2.The first respondent is the claimant whereas the second respondent herein is the owner of the vehicle.

3.Heard the submissions made by Mr.B.Rajesh Saravanan, learned counsel appearing for the appellant/Insurance Company and Mr.N.Sudhagar Nagaraj, learned counsel appearing for the first respondent/claimant. Despite service of notice on the second respondent, he has not chosen to appear before this Court either in person or through his counsel.

4. It is apparent from the records that the first respondent/claimant has moved the Motor Accident Claims Tribunal (III Additional Subordinate Judge), Tiruchirappalli, with the above said claim petition, claiming a sum of Rs.4,00,000/- for the injuries sustained by him in a road traffic accident said to have been taken place on 24.02.2007 involving a mini-door Auto bearing Registration No.TN-46C-6841 belonging to the second respondent herein, which was insured with the appellant Insurance Company. This fact has not been disputed.

5.The petitioner/claimant had examined himself as PW1 and marked Ex.P.1 to 11. One Dr.Rajendran was examined as PW2. During the course of his examination Ex.P.12 and Ex.P.13 were marked. On the other hand one Habeeba Ammal was examined as RW1. During the course of her examination Ex.R1 to R3 were marked. Besides these exhibits X1 to X3 were also marked as the court documents.

6. On appreciation of the evidences both oral and documentary, the Tribunal had proceeded to allow the claim petition awarding the total amount of Rs.2,94,610/-. The appellant Insurance Company was directed to pay this amount to the first respondent/claimant within a period of three months with interest at the rate of 7.5% p.a. from the date of filing of the Claim Petition till date of deposit.

7. Mr.B.Rajesh Saravanan, learned counsel appearing for the appellant/Insurance Company contends that the driver of the second respondent herein was not having any valid driving licence to drive the vehicle at the time of accident and therefore the second respondent had violated the policy condition for having allowed a person to drive his vehicle without any valid driving licence. He has also submitted that the second respondent's driver had not renewed his driving licence and he was also not having any batch with an endorsement to drive a commercial vehicle at the time of the accident. In this regard he would submit that despite their strenuous contest made before the Motor Accident Claims Tribunal, the contention of the Insurance Company was not considered, instead, the tribunal had gone to the extent of directing the Insurance Company to pay the entire award amount to the first respondent/claimant, as if, the Insurance Company is having vicarious liability to indemnify the loss of the second respondent.

8. According to Mr.B.Rajesh Saravanan, learned counsel appearing for the appellant, since the appellant/Insurance Company was not liable to pay the compensation as the second respondent/owner of the vehicle had violated the policy condition, the liability that too, a vicarious liability could not be attached with the Insurance Company and therefore, it could not be compelled to pay the compensation to the first respondent/claimant. He has also added that the award of the Tribunal might be slightly modified to the effect, that the Insurance Company may pay the award amount to the first respondent/claimant with liberty to recover this amount at the later point of time from the second respondent-owner of the vehicle by filing an execution petition without actually filing a suit, for recovery of amount.

9. Mr.N.Sudhagar Nagaraj, learned counsel appearing for the first respondent/claimant has no objection to modify the award as suggested by

Mr.B.Rajesh Saravanan. In this connection this Court would like to place reliance upon the decision of the Apex Court in *S.Iyyapan vs. United India Insurance Co. Ltd., and another* reported in *2013 (7)SCC 62.*

10. In this case while speaking on behalf of the Division Bench of the Apex Court, the Hon'ble Mr.Justice, M.Y.Eqbal has observed that Section 149 of the Motor Vehicle Act, 1988, makes it mandatory on the part of the insurer to satisfy the judgments and awards against persons insured in respect of thirty party risk. Section 149, Sub Clause 2(a)(ii) of the said Act give a right to the insurer to take a defence that the person driving the vehicle at the time of accident was not duly licensed; in other words, Section 149 Sub Clause 2(a)(ii) itself has a condition excluding driving by any person who is not duly licensed. His Lordship has also observed that mere absence of the said endorsement in licence could not be a ground for the insurer to disown his liability to pay compensation to third party. More so, when third party had statutory right to recover compensation from insurer and it was for the insurer to proceed against the insured for recovery of amount paid to third party in case there was any breach of condition of insurance policy.

11. The relevant portion of the judgment that is Para No.17 is extracted as under:

"17.Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,

(i) the vehicle was not driven by a named person.

(ii) it was being driven by a person who was not having a duly granted licence, and

(iii) person driving the vehicle was disqualified to hold and obtain a driving licence.

Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."

12. Keeping view of the fact, this Court has endorsed the suggestion made by Mr.B.Rajesh Sarvanan and accordingly the award of the tribunal is required to be slightly modified with regard to the direction given as against the appellant/insurance company. Accordingly, the operative portion of the award of the tribunal is modified as under:

13.The appellant/insurance company is directed to pay the compensation awarded by the tribunal to the first respondent/claimant within a period of four weeks with interest at the rate of 7.5% from the date of filing the petition till date of deposit. The appellant/Insurance Company is entitled to recover the said amount from the insurer viz., the second respondent/owner of the vehicle by way of filing execution petition without actually filing a suit for recovery of the said amount. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal
III Additional Sub Court, Tiruchirappalli.

+1cc to Mr.N.Sudhagar Nagaraj, Advocate SR.No.66656
+1cc to Mr.B.Rajesh Saravanan, Advocate SR.No.66394

C.M.A.(MD)No.630 of 2015
and
M.P.(MD).No.2 of 2015
19.11.2015

PJL
NS/AAL-MPA/08.12.2015 : 4P/4C