BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.08.2015
CORAM:
THE HONOURABLE MR.JUSTICE P.DEVADASS
C.M.A. (MD) No.925 of 2015
and
M.P.(MD) No.2 of 2015

The Oriental Insurance Company Limited
through its Branch Manager
S.N.H.Road Office, Tirunelveli ... Appellant / 3rd Respondent

-vs-

1.Minor.Harsha ... 1st Respondent / Petitioner

2.Arumugam ... 2nd Respondent / 1st Respondent

3.National Insurance Company Ltd.,
through its Branch Manager
Tirunelveli ... 3rd Respondent / 2nd Respondent
(R1 is rep.by through his father and
natural guardian Nallaperumal and
R3 is given up)

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the order of the Tribunal of MACT-cum-Additional Sub Court, Thenkasi, made in M.C.O.P.No.264 of 2005, dated 06.03.2012, and allow the appeal with costs.

For Appellant : Mr.C.Jawahar Ravindran

For Respondent : Mrs.P.Krishnaveni
for Mr.A.Haja Mohideen for R1

For R2 : No Appearance

J U D G M E N T

This insurer's appeal is on quantum as well as on liability.

2. This matter relates to a road accident victim, who suffered grievous injuries because of the negligence on the part of the driver of the second respondent, whose vehicle has been insured with the appellant / Insurance Company.

3. Appreciating the oral and documentary evidence, the Tribunal assessed the total compensation at Rs.2,64,000/-.

4. The learned counsel for the appellant would submit that admittedly, the injured is a female child, then aged about five years and the disability was at 20%. However, the Tribunal adopted the multiplier and awarded Rs.1,08,000/- towards permanent disability.

5. The learned counsel for the appellant would also submit that as the injured is a child, multiplier method ought not to have been adopted.

Since multiplier method has been adopted, it had resulted in awarding excessive compensation and in the other heads also what was awarded is on the higher side.

6. The learned counsel for the appellant would also submit that the offending vehicle is an auto-rickshaw. As per the policy conditions, the permitted capacity is only three, however, it was proved that at the time of accident it had carried 5+1 (driver). It is in excess of the permitted capacity. It is violation of the terms and conditions of the policy. Thus, the insurer disputes its liability and seeks its exoneration.

7. On the other hand, the learned counsel for the first respondent / claimant would submit that in order to provide adequate compensation in view of the fact that a child has sustained grievous injuries, the Tribunal thought it fit to adopt the multiplier method and adopted it. Even if the offending vehicle carried the passengers in excess of the permitted capacity, it will not absolve the insurer from shouldering the risk of the insured in satisfying the Decree in pursuance of the certificate of insurance issued by the insurer.

8. The learned counsel for the claimant also submitted that it may be a dispute *inter se* between the insurer and the insured, the injured is a third party, so, she must be paid the compensation by the insurer.

9. I have anxiously considered the rival submissions, perused the materials on record and the impugned award of the Tribunal.

10. The Tribunal awarded compensation as under:

Heading	Amount
Permanent Disability	Rs.1,08,000/-
Medical Expenses	Rs. 93,000/-
Pain and Suffering	Rs. 30,000/-
Extra Nourishment	Rs. 10,000/-
Transportation	Rs. 5,000/-
Attender Charges	Rs. 18,000/-
Total	Rs.2,64,000/-

11. Considering the age of the victim, nature of the injury, period of treatment, effect of the injury, we disagree with the multiplier adopted by the Tribunal.

12. In the facts and circumstances, Rs.3,000/- per percentage for 20% disability would be just and proper. Thus, it would be Rs.60,000/-. Reimbursement of medical expenses to the extent of Rs.93,000/- cannot be faulted. Award of Rs.30,000/- towards pain and suffering is not abnormal. It is pertinent to note that a tender age child has sustained injuries. She would have undergone lot of pain and suffering. She has been hospitalized for a considerable period. In the circumstances, Rs.10,000/- towards extra-nourishment is on the lower side. Thus, it has been raised to Rs.20,000/-. Transport expenses is also increased from

Rs.5,000/- to Rs.7,000/-. Reimbursement of Attender charges of Rs.18,000/- is raised to Rs.20,000/-.

13. Now, the revised compensation is as under:

Heading	Awarded by the High Court
Permanent Disability	Rs. 60,000/-
Medical Expenses	Rs. 93,000/-
Pain and Suffering	Rs. 30,000/-
Extra Nourishment	Rs. 20,000/-
Transportation	Rs. 7,000/-
Attender Charges	Rs. 20,000/-
Total	Rs.2,30,000/-

14. The scheme of risk coverage has been brought into existence under Motor Vehicles Act, 1939. As per Section 96, there is compulsory insurance of the vehicles. It is not intended to promote the insurance business. It is for risk coverage. In other words, it is for indemnifying the vehicle owners in the event of they being made to answer any Decree passed in a claim for compensation in a road accident. The responsibility to satisfy the Decree passed by the Tribunal constituted under Motor Vehicles Act has been statutorily fixed on the Insurance Company.

15. In a spate of cases forgetting their statutory liability Insurance Companies started finding fault on the part of the insurer/vehicle owner and trying to avoid their said statutory liability. In other words, they wanted exoneration from liability on the ground that there is violation of terms and conditions of the policy. There are zigzag decisions in this area among various High Courts.

16. The Hon'ble Supreme Court, in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan [1987 (2) SCC 654]*, analyzed the salient provisions of the Motor Vehicles Act vis-a-vis the role of Insurance Companies in satisfying the Decree/Award granted by the Tribunals. Unless the victims are not assured of the compensation amount, these Awards will become another paper decrees (awards). In such circumstances, the Hon'ble Supreme Court analyzed the issues and laid down a clear cut proposition that once certificate of insurance is issued, there is a bi-party agreement to which the Insurance Company and the vehicle owner are parties. It is intended for the benefit of a third party. That is how third party claims.

17. But, under certain circumstances / grounds, as provided in M.V.Act, the Insurance Company can avoid its liability. If the violation of the terms conditions is willful on the part of the vehicle owner, in other words, the owner knows that his driver is an unqualified person or a person, who is having a fake license, then it is a ground for the Insurance Company to proceed as against the vehicle owner, but it cannot be a ground to avoid their statutory liability to pay the compensation to the third parties.

18. This is the basis of "pay and recover" principle. Thereafter, several cases came. The principle is first 'to pay' the amount to the injured or dependents of the deceased and then recover the amount from the vehicle owner under certain circumstances.

19. Admittedly, in this case, the insured vehicle is an auto-rickshaw. The premium paid is for three passengers. However, on evidence, it has been proved that at the time of accident it had carried 5+1 (driver). It is in excess of the permitted capacity. It is violation of the terms and conditions of the policy.

20. In such circumstances, the Hon'ble Supreme Court in *United India Insurance Co. Ltd. vs. K.M.Poonam [2011 (2) SCALE 568]*, has advocated a methodology by restricting the claim upto the permitted limit and for the excess it had adopted pay and recover principle. But, to invoke the same, there must be more than the permitted capacity. If there are above three claimants, then upto three claimants the compensation amount must be paid by the Insurance Company and for the excess, pay and recover principle has to be adopted.

21. Now, in this case, there is only one claimant. Therefore, we have no occasion to strain ourselves further. As there is violation of terms and conditions of the policy, based on the decision in *Oriental Insurance Co. Ltd., v. Shri Nanjappan and others [2004 (1) TN MAC (SC) 211]*, we shall invoke the "pay and recover" principle in this case.

22. In view of the foregoings, the Award of the Tribunal is modified to the effect that the claimant is entitled to Rs.2,30,000/- together with 7.5% interest p.a., from the date of petition till deposit and with costs. The entire modified award amount, as stated above, shall be deposited within two months from the date of receipt of a copy of this Judgment, less amount, if any already deposited.

23. The entire modified award amount shall be deposited in a Nationalized Bank till the first respondent attains majority. Her father shall be paid quarterly interest regularly. The Tribunal will write to the concerned Bank instructing the Manager to regularly disburse the interest amount to the father of the child, namely, Nallaperumal.

24. Accordingly, this civil miscellaneous appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(writ)

/TURE COPY/

Sub Assistant Registrar

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To:

1.The Principal District Judge,
Tirunelveli.

2.The Motor Accident Claims Tribunal,
(Additional Sub Judge),
Tenkasi.

+1 cc to MR.C.JAWAHAR RAVINDRAN, ADVOCATE, SR NO: 50215
+1 cc to MR.HAJA MOHIDEEN , ADVOCATE, SR NO: 50108

JAM/NGM-SS/SAR-II/28.9.15/5P-5C

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