IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.09.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

C.M.A. Nos.2133 and 2134 of 2016
and
C.M.P. Nos. 15393 & 15394 of 2016

The Divisional Manager,
New India Assurance Co.Ltd.,
Big Street
Thiruvannamalai. .. Appellant in both CMAs/ 2nd Respondent

Vs.

1. Mr. G. Rajendran ...1st Respondent/ Petitioner
2. Mr. M. Sanjeevi ... 2nd Respondent/ I Respondent

1. Mrs.N. Dhanalakshmi
2. Mr. N. Ariveen Kumar
3. Minor Praveen Kumar
   rep. By mother N. Dhanalakshmi
4. Mrs. Indirani
   Ramakrishnan (died) .. Respondents / Petitioners

6. Mr.M. Sanjeevi ..6th Respondent/ 1st Respondent

Prayer: Appeal under Section 173 of the Motor Vehicles Act, 1988 against the Decrees and Judgments dated 14.02.2014 made in MCOP Nos. 1238 and 1426 of 2013 on the file of Special Subordinate Judge, Motor Accidents Claims Tribunal, Tirupathur.

For Appellant in both CMAs : Mr. R. Neethi Perumal

For Respondents in both CMAs : Mr. P.A. Sudesh Kumar

COMMON JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Arising out of an accident, which occurred on 24.03.2011, involving a Yamaha Crux motorcycle bearing Registration No. TN 23 BZ 9153 and a TATA 407 vehicle bearing Registration No. TN 29 V 9117, insured with the New India Assurance Company Limited, one Narayanasamy, motorcyclist died. The pillion rider G. Rajendran sustained injuries.

2. Legal representatives of the deceased Narayanasamy filed M.C.O.P No.254 of 2011, on the file of Subordinate Judge, Tirupattur, claiming a compensation of Rs.25,00,000/-, under various heads. The injured Rajendaran filed M.C.O.P No. 246 of 2011, on the file of Subordinate Judge, Tirupattur, claiming compensation of Rs.25,00,000/-. Both the claim petitions were transferred to the file of the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Tirupattur and re-numbered as M.A.C.T.O.P No.1426/2013 and 1238/2013 respectively. As the facts and evidence are common, both the claim petitions have been jointly tried.

3. On behalf of the claimants and the Insurance company, witnesses have been examined and Exhibits have been marked. On evaluating the oral and documentary evidences of both the parties, the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Tirupattur, passed a judgment on 14.02.2014, holding that the driver of TATA 407 vehicle bearing Registration No.TN 29 V 9117 and insured with the appellant insurance company, was negligent in causing the accident.

4. In so far as M.C.O.P No.1426 of 2013 filed by the legal representatives of the deceased Narayanasamy is concerned, the Tribunal quantified the compensation of Rs. 18,23,920/-, under the following heads, with interest @ of 7.5% per annum :

1. For Loss of dependency	..	Rs.	17,53,920.00
2. For Loss of Estate	..	Rs.	10,000.00
3. For loss of consortium to 1st petitioner	..	Rs.	10,000.00
4. For loss of love and affection to petitioners 2 to 5 (each Rs.10,000/-)	..	Rs.	40,000.00
5. For funeral & transportation expenses	..	Rs.	10,000.00
Total	..	Rs.	18,23,920.00

In the claim petition of the injured in M.C.O.P No.1238 of 2013, the Tribunal quantified the compensation of Rs.1,93,500/-, under the following heads, with interest @ of 7.5% per annum :

1.	For loss of income	.. Rs.	36,000.00
2.	For extra-nourishment & Attendant charges	.. Rs.	10,000.00
3.	For Medical expenses	.. Rs.	16,488.00
4.	For pain and sufferings	.. Rs.	25,000.00
5.	For permanent disability	.. Rs.	96,000.00
6.	For Transportation charges	.. Rs.	10,000.00
	Total	.. Rs.	1,93,488.00

(rounded off to Rs. 1,93,500.00)

The Tribunal held that the Insurance Company is liable to pay compensation to third party victims, namely, the legal representatives of the deceased and the injured.

5. Before the Tribunal, the claimants have marked the driving licence of the driver of TATA 407, who is also the owner of the vehicle and caused accident, as Ex.P10 and that the same was also marked by the Insurance Company as Ex.R1. Upon perusal of the same, the Tribunal has found that the driving licence of the owner cum driver of TATA 407 had expired in the year 2008 itself, when, the accident occurred on 24.03.2011. Thus, the claim Tribunal found that on the date of accident the driver cum owner of TATA 407 did not possess a driving licence and hence categorically held that there is violation of policy condition. However, taking note of the legal position that mere non-possession of the driving licence would not extricate the liability of the Insurance company, the appellant herein, has directed the Insurance company to pay compensation to the third party victims and also permitted to recover the said compensation from Mr. Sanjeevi, the driver cum owner of TATA 407 vehicle, by filing an Execution Petition, on the basis of the award passed in both the claim petitions, without resorting to any separate proceedings.

6. We have gone through the grounds raised in both the Memorandum of Appeals. Violation of the policy condition is per se apparent. The contention of Mr. R. Neetheperumal, learned counsel for the appellant Insurance Company that the Tribunal ought to have dismissed the claim petition, as there is a deliberate violation of the policy condition by the insurer, is not tenable. The decision of the Tribunal permitting the Insurance company to pay and recover from the owner, is fortified by the decision of the Hon'ble Supreme Court of India, in the case of Oriental Insurance Co.Ltd., Vs. Shri Nanjappan

and others, reported in I (2004) ACC 524 (SC) and in the recent decision in S.Iyyapan v. United India Insurance Co. Ltd., reported in 2013 (7) SCC 62, the Supreme Court, while dealing with the similar contentions and after considering a catena of decisions, at Paragraph 17, held as follows:

> "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."

7. In view of the above, both the appeals deserve to be dismissed. Accordingly, the C.M.A. Nos.2133 and 2134 of 2016 are dismissed. Consequently, the Miscellaneous Petitions are closed. No costs.

8. Consequent to the dismissal of the appeals, the appellant-Insurance company, is directed to deposit the entire award amount, in both the cases, with interest, at the rate of 7.5% per annum from the date of claim till the date of realisation and costs, less the amount already deposited, to the credit of MCOP Nos.1426/2013 and 1238/2013 dated 14.02.2014 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court), Tirupattur, within a period of six weeks from the date of receipt of a copy of this order.

9. On the date of filing of the claim petition, the 3rd claimant/ 3rd respondent in C.M.A. No. 2134 of 2016, was a minor. At this point of time, he has attained majority. Therefore, it is open to the respondents/ claimants to file appropriate applications before the Tribunal to discharge the guardianship and to seek for disbursement of his share amount, with interest, as apportioned by the Tribunal. It is open to the respondents/major claimants in both the appeals to seek for disbursement of the award amount, by making necessary applications.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

avr

To

The Motor Accidents Claims Tribunal,
Special Subordinate Judge, Tirupattur.
Vellore District

C.M.A. Nos.2133 and 2134 of 2016
and
C.M.P. Nos. 15393 & 15394 of 2016

PPA (CO)
kk 17/11