IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.1299 of 2012
and
M.P.No.1 of 2012

M/s. Royal Sundaram Alliance Insurance Company Ltd.,
Sundaram Towers,
No.45 & 46, Whites Road,
Chennai-600 014. ... Appellant/2nd Respondent

Versus

1.Mr.Balasubramaniam ... 1st Respondent/Petitioner

2.M/s.Jeyamani Blue Metals,
No.895/3, Pudupatty(Post),
Namakkal District. ...2nd Respondents/1st Respondent

(2nd respondent was set ex-parte before the lower Court).

Prayer: Civil Miscellanies Appeal has been filed under Section 173 of the Motor Vehicles Act of 1988, against the Judgement and decree dated 20.12.2011 passed in M.C.O.P.No.450 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District court(Fast Track Court), Namakkal.

For Appellant :Mr.N.Vijayaraghavan

For R1 :Mr.P.Thangavel

JUDGMENT

Questioning the liability, this Civil Miscellaneous Appeal is filed by the appellant/Insurance Company, who is the second respondent in the claim petition in MCOP No.450 of 2010.

2. The first respondent herein had moved the Motor Accidents Claims Tribunal, with a claim petition in MCOP No.450 of 2010 claiming Rs.7,00,000/- for the injuries sustained by him in a road traffic accident, said to have been taken place on 27.04.2010 @ 6.30 p.m. in front of Marappa Naicken Patti

Mariamman Temple, involving a two wheeler TVS XL, bearing Registration No.TN-28/AC-6521 and LGV Maheindra Van bearing registration No.TN -28/AD-5472.

3. The appellant/Insurance Company had contested the claim, while the first respondent being the owner of the vehicle remained ex-parte. The Claims Tribunal, based on the evidences available on record had proceeded to award a total sum of Rs.2,09,700/-, directing the appellant/Insurance Company, to deposit the said amount with interest @ 7.5% p.a. from the date of petition till the date of deposit.

4. The appellant/Insurance Company had taken a stand before the Claims Tribunal that the driver of the Van bearing registration No.TN-28/AD- 5472 was not having valid and effective driving licence to drive the category of vehicle at the time of accident. He had also taken another stand saying that the rider of the Motor Cycle bearing Registration TN-28/AC-6521, was also not having valid driving licence at the time of accident to drive the category of vehicle and therefore, the appellant/Insurance Company had urged before the Claims Tribunal that it was not liable to make good the loss of the first respondent.

5. However, ignoring this contention, the Claims Tribunal had proceeded to direct the appellant/Insurance Company, to pay the entire award amount of Rs.2,09,700/- with interest @ 7.5% p.a., to the claimants.

6. When the appeal is taken up for hearing today, Mr.N.Vijayaraghavan, learned counsel appearing for the appellant has contended that the first respondent had violated the policy condition as he had allowed a person, who was not having valid driving licence, to drive the vehicle. Since the first respondent himself had violated the policy condition, the appellant/Insurance Company is not at all liable to indemnify the loss of the insured.

7. On the other hand, Mr.N.Vijayaraghavan, learned counsel has drawn the attention of this Court to the judgement of the Apex Court in S.IYYAPPAN vs. M/s. United India Insurance Company Ltd and another, Civil Appeal No.4834 of 2013 dated 1st July 2013, wherein, the Hon'ble Mr.Justice M.Y .Eqbal in paragraph Nos.17 & 18 has observed as under:

> Para17: The heading Insurance of Motor Vehicles against Third party Risks given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 10=939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that

the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

Para.18: Reading the provisions of Sections 146 & 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurers right is safeguarded but in any event the insurer has to pay compensation when a valid certificate 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 insurance policy.

8. Since, the offending vehicle was insured with the appellant/Insurance Company, which covers the third party risk also, the Insurance Company might be directed to pay the said amount to the claimants and in the later stage the Insurance Company can recover that amount from the owner of the vehicle through the execution proceedings without actually filing a suit for recovery of money.

9. The learned counsel Mr.N.Vijayaraghavan, has also conceded the suggestion made by the respondent's counsel and accordingly, he has urged that the award may be confirmed and the Insurance Company may be directed to pay the said amount with liberty to recover the amount from the owner of the vehicle in the later stage through the execution proceedings without actually filing a suit for recovery of money.

10. Keeping in view of the above fact, this Court finds that the Appeal may be dismissed after confirming the award. Accordingly, the Civil Miscellanies Appeal is dismissed. The award passed by the Tribunal is confirmed. The Insurance Company is directed to pay the entire award amount alongwith interest @ 7.5% p.a., as directed by the Claims Tribunal to the claimants and this amount could be recovered by the Insurance Company from the owner of the vehicle, who is the second respondent herein, through the execution proceedings, without actually filing a suit for recovery of money. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Additional District Court, (Fast Tract Court),
Namakkal.

1 cc to M/s.Ma.P.Thangavel, Advocate, sr.32535
1 cc to M/s.N.Vijayaraghavan, Advocate, sr.32969

C.M.A.No.1299 of 2012
and
M.P.No.1 of 2012

mp co
kra 19.09.2016