IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.04.2016

CORAM

THE HON'BLE Mr.JUSTICE S.VAIDYANATHAN

C.M.A.No.3586 of 2013
and M.P.No.1 of 2013

M/s.ICICI Lombard General Insurance Co. Ltd.,
No.14/66, Thiruvalluvar Nagar,
Alandur, Chennai-16. ... Appellant/Second respondent

Vs.

1.Minor M.Karthic ...1st respondent/Petitioner
Rep. by his father & NF Muthu Krishnan
2.V.Ratnaji ... 2nd Respondents/1st respondent

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.1794 of 2007 dated 15.02.2012 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For 1st Respondent : Mr.T.G.Balachandran

J U D G M E N T

The Insurance Company has preferred the above appeal as against the judgment and decree dated 15.02.2012 made in M.C.O.P.No.1794 of 2007 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai.

2. Heard the learned counsel for the appellant and the learned counsel who took notice for the 1st respondent and perused the materials available on record.

3. This is a case of injury. In an accident that took place on 18.04.2007 at 06.40 hours, when the claimant/minor boy, aged 14 years, was proceeding in cycle at Thyagaraya Road, Chennai-17 from West to East direction near Biju Ramanas Hotel, a car bearing Registration No.TN02 X 9946 owned by the 2nd respondent, insured with the appellant/insurance company, came in a rash and negligent manner, hit against the claimant's

cycle, due to which the claimant sustained injuries. Claiming compensation to the tune of Rs.1,25,000/-, the claimant approached the Tribunal by filing M.C.O.P.No.1794 of 2007.

4. In support of the claim, the father of the claimant was examined as P.W.1; the Doctor who examined the claimant was examined as P.W.2 and Exs.P1 to P9 were marked. On the side of the Insurance company, one P.Balamurugan was examined as R.W.1 and four documents were marked vide Exs.R.1 to R4.

5. The Tribunal based on the oral evidence of the witnesses and the documentary evidence, granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No.	Head	Amount granted by the Tribunal
1	Transport to hospital	Rs. 1,000/-
2	Extra Nourishment	Rs. 3,000/-
3	Damages	Rs. 1,000/-
4	Loss of amenities	Rs. 10,000/-
5	Medical expenses	Rs. 1,000/-
6	Pain and suffering	Rs. 15,000/-
7	Disability of 19% at the rate of Rs.1,000/- per percentage	Rs. 19,000/-
	Total	Rs. 50,000/-

Aggrieved over the said award, the Insurance Company has come forward with this appeal.

6. The point raised by the learned counsel for the appellant/Insurance Company is that pay and recovery has not been ordered by the Tribunal, more particularly when the driver of the offending vehicle did not possess driving license on the date of accident and thereby violated the terms and conditions of the policy. It is his further contention that the Tribunal erred in fixing the disability at 19% for the simple injuries sustained by the claimant and hence, it has got to be interfered with.

7. As per the dictum laid down by the Hon'ble Apex Court in the case of S.Iyyapan Vs. United India Insurance Co.Ltd., [2013] 7 SCC 62, non-possession of valid driving license cannot be a ground for the insurance company to disown its liability to pay compensation to third party. At the maximum, this Court can

give liberty to the insurance company to recover the compensation amount from the owner of the vehicle after paying the same to the victim/claimants. In view of the dictum laid down by the Hon'ble Apex Court in the decision cited supra, this Court is not inclined to set aside the finding of the Tribunal.

8. Further, as regards recovering compensation from the owner of the vehicle, the Apex Court in the case of Oriental Insurance Co. Ltd., Vs. Shri Nanjappan and Others, 2004 [2] CTC 464 [SC], has held as under:

> "7. For the purpose of recovering the compensation amount 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 insured was the subject matter of determination before the Tribunal and as if the issue is decided against the owner and in favour of the Insurer. A notice shall be issued to the insured to furnish security for the entire amount. 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 realisation by disposal of the securities to be furnished or from any other property of the insured".

9. Hence, while confirming the judgment and decree dated 15.02.2012 made in M.C.O.P.No.1794 of 2007 on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai, in view of the decision rendered by the Apex Court in S.Iyyapan's case cited supra, this Court grants the relief sought by the appellant/Insurance Company, by holding that they are entitled to recover the amount from the owner of the vehicle, after paying compensation amount to the claimant. Also, in view of the dictum laid down in Oriental Insurance Company's case cited supra, it is open to the appellant Insurance Company to file an Execution Petition for recovering the compensation from the owner of the vehicle.

10. If the compensation amount has not been deposited so far, four weeks' time, from the date of receipt of this order, is granted to the appellant/Insurance Company to deposit the

amount as awarded by the Tribunal in the Judgment and decree dated 15.02.2012 made in M.C.O.P.No.1794 of 2007 and on such deposit being made, the claimant is directed to file necessary application before the Tribunal to receive the amount. If the compensation amount has already been deposited, the claimant is entitled to withdraw the amount by filing necessary application before the Tribunal.

The Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
V Court of Small Causes,
Chennai.

2.The Section Officer,
VR Section,
High Court Madras.

+1cc to Mr.T.G.Balachandran, Advocate Sr.29020
+1cc to Ms.R.Srividhya, Advocate Sr.27834

C.M.A.No.3586 of 2013
and
M.P.No.1 of 2013

lrs[co]
srg 12/07/2016