BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.1221 of 2016
and
C.M.P(MD)No.10621 of 2016

The Check Mate Pvt. Ltd.,
Amman Towers,
Parthikanj, Baroda, Petkanj Head Office,
Vadhothra,
Gujarat State. .. Appellant/1st Respondent

-Vs-

1.Minor.Jeyaprakash
2.Minor.Jegan
3.Jeyalatha
4.Jenippo
5.Rethina Marry
6.Periya Nayagam
7.Antony Groose .. Respondents 1 to 7
(Minor Respondents 1 and 2 are
represented through 5th respondent
Mother and natural guardian)

8.The General Manager,
Cholamandalam MS General Insurance Company Ltd.,
Dare House, II Floor,
NSC Bose Road,
Chennai-1. .. 8th Respondent/2nd Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order, dated 30.04.2014 made in M.C.O.P.No.69 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Thiruchirappali.

For Appellant : Mr.S.Mohandoss

JUDGMENT

The case on hand is a case of pay and recovery. The owner of the vehicle, which met with an accident preferred this appeal against the award, dated 30.04.2014 passed in M.C.O.P.No.69 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Thiruchirappali.

2. The accident took place on 11.03.2009 at about 12.09 p.m., near Keeranur-Trichy road. The claimants filed an application seeking compensation before the Tribunal and the Tribunal considering the facts and the circumstances of the case, passed an award granting a sum of Rs.7,38,000/- as total compensation. While awarding compensation, the Tribunal found that the Driver, who had driven the vehicle was not possessing valid badge endorsement and therefore, the policy conditions are violated. Therefore, the Tribunal ordered pay and recovery. Against which, the present appeal is filed by the appellant/owner of the vehicle questioning the pay and recovery order passed by the Tribunal.

3.Considering the facts and the circumstances of the case, this Court is of the view that the liability fixed on the owner is in accordance with the principles laid down by the Honourable Apex Court of India in ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC), the Hon'ble Supreme Court*** in paragraph 7 it has been held as follows:-

> ***"(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 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."***

4. The learned counsel appearing for the appellant cited a judgment in ***Kulwant Singh & ors. vs. Oriental Insurance Co. Ltd.***, reported in ***2014 (2) TNMAC 666 (SC)***, paragraph No.10 of the said judgment is extracted hereunder:

> ***10.In S.Iyyapan (supra), the question was whether the Driver, who had a licence to drive 'Light Motor Vehicle' could drive 'Light Motor Vehicle' used as a Commercial Vehicle, without obtaining endorsement to drive a Commercial Vehicle. It was held that in such a case, the Insurance***

Company could not disown its liability. It was observed:

> ***"18. In the instant case, admittedly the Driver was holding a valid Driving Licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the Driver did not get any endorsement in the Driving Licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the Insurer is not liable to pay compensation because the Driver was not holding the licence to drive the Commercial Vehicle. The impugned Judgment(Civil Misc. Appeal No.1016 of 2002, order, dated 31.10.2008 (Mad) is, therefore, liable to be set aside.***

5. The judgment cited supra is not applicable in respect of the facts and the circumstances of the present case is concerned. The Honourable Apex Court of India in the case of **Shri Nanjappan's case**, elaborately discussed the circumstances under which the principle of pay and recovery shall be adopted. But, in the case cited by the learned counsel for the appellant, no such discussions are held and further, the facts and the circumstances of the present case on hand, is not similar to that of the case decided by the Honourable Supreme Court in the case cited in para 4.

6. Further, the appellant/owner had not adjudicated this issue before the Tribunal by eliciting proper evidences, by producing required documents to establish that he is not liable to pay compensation and no order of pay and recovery is to be passed in the present case. In the absence of the appellant adjudicating this issue before the Tribunal, now, the appellant cannot factually urge before this Court in respect of the order of pay and recovery ordered by the Tribunal. The facts pleaded cannot be altered at the appeal stage and so also, the facts admitted before the Tribunal cannot be disputed in the appeal before the High Court.

7. In view of the above fact, this Court is not inclined to entertain the appeal filed by the appellant/owner as the same is devoid of merits and accordingly, the same is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

8. The eighth respondent/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited. The respondents 3 to 7 are permitted to withdraw their respective shares, as per the ratio of apportionment made by the Tribunal, with accrued interest

and costs through RTGS by filing necessary application before the Tribunal concerned, if not already withdrawn. The shares of the minor claimants shall be deposited, in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The fifth respondent, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest of the minor once in three months directly from the bank, only for the welfare of minors. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Deputy Registrar(Accounts)

/True Copy/

Sub Assistant Registrar

pm

To

1 The Special District Judge,
The Motor Accident Claims Tribunal,
Thiruchirappali

2 The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai

+1cc to Mr.S.Mohandoss Advocate Sr.No. 68507

JAM/24.01.2017/GSV-SV 4p-4c

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