BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.11.2016
Coram:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A(MD)No.1315 of 2014
and
M.P.(MD) No. 1 of 2014

THE ORIENTAL INSURANCE COMPANY LIMITED.
REP.BY ITS DIVISIONAL MANAGER
MADURAI ROAD,
VIRUDHUNAGAR. .. Appellant /3rd Respondent

-Vs-

1.NAVANEETHAKRISHNAN

2.MINOR.SARAVANAKUMAR

3.MINOR.INBARAJAN .. 1-3rd Respondents/1-3rd Petitioners

(MINORS 2ND AND 3RD RESPONDENTS REP.
BY THEIR GUARDIAN AND FATHER,
1ST RESPONDENT NAVANEETHAKRISHNAN)

4.J.J.CHEMICALS
NO.30, RAMAMOORTHY ROAD,
VIRUDHUNAGAR. ..4th Respondent/1st Respondent

5.GUNASEKARAN ..5th Respondent/2nd Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award made in MCOP No.12 of 2013, dated 24.06.2014, on the file of the Motor Accidents Claims Tribunal cum Additional District Judge, Virudhunagar.

For Appellant : Mr. K. Bhaskaran
For Respondents : Mr. S.Ramasamy for R4
: M/s. D.Farjana Ghoushia for R5

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree passed in MCOP No.12 of 2013, dated 24.06.2014, on the file of the Motor Accidents Claims Tribunal cum Additional District Judge, Virudhunagar.

2.The unfortunate fatal accident took place on 09.03.2012 at about 7.00 a.m, on Virudhunagar - Mallanginaru Road. The deceased was 33 years old at the time of the accident and was earning

Rs.10,000/- per month. Due to the grievous injuries sustained, the occurrence of death took place. The heirs filed the claim petition and the Motor Accidents Claims Tribunal cum Additional District Judge, Virudhunagar passed an award amount of Rs.11,40,000/- in M.C.O.P.No.12 of 2013, on 24.06.2014.

3.The main contention raised by the learned counsel for the appellant is that the tribunal has categorically made a finding that the driver, who had driven the vehicle was not having a valid driving licence to drive the vehicle and therefore, the appellant/Insurance Company is not liable for compensation. The tribunal also categorically made a finding that the vehicle was driven by a minor viz., Selva Balaji, who was not having a valid driving licence to drive the vehicle and therefore the liability of the Insurance Company is to be exonerated.

4.The learned counsel appearing for the respondent Nos.4 and 5 contended that the entire liability of the Insurance Company cannot be exonerated, in view of the principles laid down by the Honourable Supreme Court and various High Courts and further, it is a case, where the principles of pay and recovery is to be adopted and the contention of the learned counsel for the appellant is to be rejected.

5.With regard to the quantum of amount, this court do not find any fault on the findings of the Motor Accidents Claims Tribunal and the only point to be considered is that the total amount of Rs.3,00,000/- awarded towards love and affection seems to be higher than the amount to be granted, based on the established principles laid down in various judgments of the Honourable Supreme Court and the High Courts. In view of the status of the deceased, who was a home-maker, monthly income of the deceased was fixed at Rs.5,000/- and this Court finds no fault on that. But, this Court is of the view that the said amount of Rs.3,00,000/- awarded on a single head of love and affection shall be divided under two heads, viz., Rs.1,00,000/- towards consortium and the balance Rs.2,00,000/- towards love and affection for minor children. So, without reducing the award amount, this Court is inclined to divide the award amount of Rs.3,00,000/- to that of consortium and love and affection for Rs.1,00,000/- and Rs.2,00,000/- respectively.

6.In respect of other grounds, in view of the fact that the driver was a minor and was not possessing a valid driving licence, this Court is of the opinion that the principles of pay and recovery has to be adopted. On this aspect, in the judgment reported in *(2004)13 SCC 224* in the case *of Oriental Insurance Co. Ltd., vs. Nanjappan and others*, the Hon'ble Apex Court made the following observations:-

> “8.Therefore, while setting aside the judgment of the High Court we direct in terms of what has been

stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same 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 owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. 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 realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

7.In the case on hand, the Tribunal while awarding Rs.11,40,000/- together with 7.5% interest p.a directed the appellant to pay the award amount at the first instance and thereafter, recover from the owner of the vehicle. Therefore, this Court finds no merit in the appeal and the award passed by the Tribunal in M.C.O.P.No. 12/2013, dated 24.06.2014 on the file of the Motor Accidents Claims Tribunal cum Additional District Judge, Virudhunagar is confirmed.

7.Accordingly, Civil miscellaneous appeal is disposed of with a modification that the award amount of Rs.3,00,000/- awarded for love and affection is divided as Rs.1,00,000/- towards consortium and Rs.2,00,000/- towards love and affection for minor children. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

8.At this stage, the learned counsel for the appellant/Insurance Company represents that the entire award amount has been deposited before the Tribunal and accordingly, the appellant Insurance Company is at liberty to recover the award amount from the owner of the vehicle/4th respondent by filing appropriate proceedings before the Executing Court. The respondent No.1 /claimant is permitted to withdraw his respective share amount along with the accrued interest by filing a necessary application before the trial court. The appellant Insurance Company is directed to deposit the shares of the minors/respondents 2 and 3 in any one of the Nationalized Banks till they attain majority. The first respondent/father of the minors is permitted to withdraw the interest arising out of the said amount once in six months.

Sd/-
Assistant Registrar( )

/True Copy/

Sub Assistant Registrar

To
1.The Motor Accidents Claims Tribunal
-cum Additional District Judge, Virudhunagar.
2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Ramasamy, Advocate, Sr.No.65416
+1cc to Mr.K.Bhaskaran, Advocate, Sr.No.65529

VS
AE/CM MSA/31.01.2017/4p/5c

C.M.A(MD)No.1315 of 2014
and
M.P.(MD) No. 1 of 2014
03.11.2016