BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A.(MD)No.1405 of 2015
and
M.P.(MD).No.3 of 2015

Oriental Insurance Company Limited,
rep.by its Branch Manager,
Door No.119,
Chekkalai Road,
Karaikkudi Nagar,
Sivagangai District. .. Appellant

Vs.

1.Vallimayil
2.Jeeva .. Respondents

Prayer:- Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 11.01.2013 and made in M.C.O.P.No.51 of 2011 on the file of the Motor Vehicle Accidents Claims Tribunal (Sub Court), Paramakudi.

For Appellant : Mr.C.Jawahar Ravindran

JUDGMENT

Questioning the liability of the appellant insurance company, who is the second respondent in the claim petition in M.C.O.P.No.51 of 2011, this Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988.

2. The first respondent herein is the claimant whereas the second respondent is the first respondent in the claim petition, who is the owner of the offending vehicle.

3. Claiming a sum of Rs.2,00,000/- towards the compensation for the injuries sustained by the first respondent/claimant, he had moved the Claims Tribunal (Sub Court), Paramakudi with the claim petition in M.C.O.P.No.51 of 2011. The said accident was said to have been taken place on 02.11.2010 at about 11.00 a.m., at Paramakudi to Illayankudi Road, near Gandhi Nagar Uyyavandal Amman Temple involving a Hero Honda Motor Cycle bearing Registration No.TN-09-AP-8367. In the said accident, the

petitioner had sustained grievous injuries over his head, both lower limbs knee and on all over his body.

4. The first respondent being the owner of the vehicle remained ex-parte. The appellant insurance company being the second respondent had contested the claim.

5. Based on the evidences both oral and documentary, the claims Tribunal had proceeded to award a sum of Rs.38,469/- directing the appellant insurance company to deposit this amount with interest at the rate of 7.5% per annum along with the cost within a period of two months and in the later stage the appellant insurance company could recover the said amount from the first respondent, who is the owner of the vehicle.

6. When the appeal was taken up for hearing Mr.C.Jawahar Ravindran, learned counsel appearing for the appellant insurance company has adverted to that the tribunal, even after holding that the rider of the two wheeler was not having valid driving licence at the time of accident, had wrongly directed the appellant to pay the compensation. He has also added that the tribunal has also found that the owner of the vehicle had violated the policy conditions. In this connection he would submit that since the tribunal itself had found that the first respondent being the owner of the vehicle had violated the policy conditions, having been allowed a non-license holder to drive the motorcycle, the appellant insurance company ought to have been absolved from the liability. When the appellant insurance company was absolved from the liability of indemnifying the loss of the first respondent/owner of the vehicle, issuing a direction as against the appellant insurance company to pay the award amount to the claimaint and then recover the same from the first respondent/owner of the vehicle itself was in total negation of the settled principle of law. He has also raised a question that when the insurance company itself is not liable to pay the compensation how it could not be compelled to pay the award amount and recover the same from the first respondent in the later stage.

7. On perusal of the counter statement filed by the appellant insurance company, this Court is able to find that no specific stand was taken by the appellant insurance company saying that the rider of the motorcycle was not having valid driving licence to drive the clause of vehicle at the relevant of point of time. However, the tribunal itself has given a finding saying that the owner of the vehicle has no valid licence at the time of the accident. The appellant insurance company was exonerated from the liability of paying the compensation to the claimaint. However, as argued by Mr.Jawahar Ravindran, the appellant insurance company was directed to pay the award amount to the claimant and then recover the same from the first respondent/owner of the vehicle.

8. In this connection this Court would like to point out that the first respondent/claimant being the third party is having his statutory right to claim compensation for the injuries sustained by him. And it is admitted that the vehicle was insured with the appellant insurance company at the relevant point of time which was not denied either by the first respondent/owner of the vehicle or by the appellant insurance company. Under this circumstance as envisaged under Sections 149 and 2(a)(ii) of the Motor Vehicles Act,1988, when the first respondent/claimant being the third party has statutory right to recover the compensation from the insurer and it was for the insurer to proceed against the insured for the recovery of amount paid to third party, in case there was any breach of condition of insurance policy. This Court in order to support this view would like to have reference to the decision of the Hon'ble Apex Court in ***Iyyappan vs. United India Insurance Co. Ltd., and another***, reported in 2013 (7) SCC 62.

8. In the above cited decision a division bench of the Hon'ble Apex Court under paragraph 17 has observed as under;

> "17.Reading the provisions of Sections 146 and 147 of the Motor Vehicle Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance 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.
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> 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 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."

9. In Oriental Insurance Company Limited Vs. Nanjappan and others 2004 (13) SCC 224, another division bench of the Hon'ble

Apex Court in paragraph 8, about the decision in National Insurance Co. Ltd., Vs. Baljit Kaur reported in 2004 (2) SCC1 has observed as follows;

> "8. .... 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 proceedings before the executing court concerned 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 claimants, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. 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."

10. Under this circumstances, this Court finds that this Civil Miscellaneous Appeal is liable to be dismissed. It is thus made clear that the appellant insurance company shall deposit the award amount as directed by the Tribunal within a period of three weeks along with the proportionate interest and costs, if not deposited earlier and in the later stage, the insurance company is entitled to recover this amount from the first respondent/owner of the vehicle by way of execution proceedings without actually filing a suit as explained by the Hon'ble Apex Court in Nanjappan's case cited supra.

11. With the above direction and observations, this Civil Miscellaneous Appeal is dismissed. Consequently connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
(Sub Court), Paramaakudi

Copy to :

The Branch Manager,
Oriental Insurance Co.Ltd,
119, Chekkalai Road,
Kalaikkudi Nagar,
Sivagangai District

+1cc to Mr.C.Jawahar Ravindran, Advocate Sr.No.749

pjl
AA/SKS-RR/SAR-I/21.03.2016/5p-4c

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