BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.300 of 2015

Minor Suresh,
S/o.Chinnapandi,
Rep. Through his father and
guardian Chinna Pandi. .. Appellant/Claimant

-Vs-

1.O.Sathyamoorthy

2.Bajaj Alliance General Insurance Company Limited,
(Rep. By the Manager),
Door No.67/70,
Theni Road,
Madurai District. .. Respondents /Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.06.2012 made in M.C.O.P.No.772 of 2007 on the file of the Motor Accident Claims Tribunal, IV-Additional Sub Court, Madurai.

For Appellant : Mr.K.C.Ramalingam

For R - 2 : Mr.V.Sakthivel

JUDGMENT

The Civil Miscellaneous Appeal has been preferred against the Judgment and Decree, dated 29.06.2012 made in M.C.O.P.No.772 of 2007 passed by the Motor Accident Claims Tribunal, IV-Additional Sub Court, Madurai.

2.It is a case an injury sustained by a minor, which caused due to the accident took place on 04.04.2006 at about 05.30 p.m., on the Oomachikulam – Madurai main road and the Tribunal, considering the facts and circumstances of the case, awarded a sum of Rs.85,300/- as total compensation. Against which, the claimant preferred the present appeal on the ground that the entire liability was fixed on the owner of the vehicle instead of ordering pay and recovery.

3.The learned counsel appearing for the appellant/claimant has straightaway contended that the rider of the two-wheeler was not in possession of a valid driving licence and the same was proved before the Tribunal and the Tribunal instead of ordering pay and recovery, fixed the liability only on the owner of the vehicle, which is in violation of the principles laid down by the Honourable Supreme Court of India in the case of ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others,*** reported in ***I (2004) ACC 524 (SC).***

4.The learned counsel appearing for the second respondent/Insurance Company contended that it is a case of no valid driving licence and further, the name of the driver differs both in the F.I.R and in the charge-sheet and therefore, the second respondent/Insurance Company is not liable to pay the compensation and the second respondent was rightly exonerated from the liability.

5.Considering the rival contentions made by both by the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Insurance Company, this Court is of the view that the injured minor cannot be denied the right of compensation in view of the fact that the driver, who was driving the two-wheeler, was not in possession of valid driving licence and further, some technical error both in the F.I.R and charge-sheet.

6.The factum regarding the accident was not in dispute by either of the parties and the accident was also proved beyond the doubt. Further, the injuries sustained by the minor was also admitted before the trial Court and therefore, this Court is not inclined to exonerate both the respondents 1 and 2. The only principle to be adopted is pay and recovery in accordance with the principles laid by the Honourable Supreme Court of India in ***Nanjappan's case*** as cited supra and therefore, this Court is inclined to grant pay and recovery in the case on hand and in ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC), the Hon'ble Supreme Court*** in paragraph 8 it has been held as follows:-

> "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.Accordingly, the award passed by the Motor Accident Claims Tribunal, IV-Additional Sub Court, Madurai, in M.C.O.P.No.772 of 2007, dated 29.06.2012 is confirmed.

8.Further, it is clarified that the present appeal was filed with a delay and the appellant/claimant is not entitled for any interest from 25.09.2012 till 09.12.2014.

9.The second respondent/Insurance Company is directed to deposit the entire award amount along with accrued interest and costs **(less the interest for the period from 25.09.2012 till 09.12.2014)** within a period of four weeks from the date of receipt of a copy of this order. **The father of the appellant/claimant is permitted to withdraw the amount of Rs.35,300/- along with accrued interest and costs, as ordered by the Tribunal through RTGS by filing necessary application before the Tribunal, if not already withdrawn.** The Tribunal is directed to deposit the remaining award amount of the minor appellant/claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till he attains majority. The guardian of the minor appellant/claimant, who is the father of the minor appellant/claimant, is permitted to withdraw the accrued interest of the minor once in three months directly from the bank, only for the welfare of minor.

10.The second respondent/Insurance Company is permitted to recover the award amount from the owner of the vehicle as per the mode incorporated in **Shri Nanjappan's case** referred to above.

11.With the above observation, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
IV-Additional Sub Court,
Madurai.

+1 cc to M/s.K.K.Ramalingam, Advocate in SR.No. 71693
+1 cc to M/s.V.Sakthivel, Advocate in SR.No. 70599

ps
CSL/PV/27.12.2016: 4P/4C

C.M.A(MD)No.300 of 2015
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