



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.43 of 2015

and

M.P(MD)No.2 of 2015

The Oriental Insurance Company Limited,
through its Divisional Manager,
S.N.High Road,
Sivasakthi Shopping Complex,
Tirunelveli Junction.

..Appellant

vs.

1.Mohammed Mohideen
2.Shanmuga Pandian

..Respondents

Prayer: This appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Tribunal of MACT cum Principal Sub Court, Tirunelveli made in M.C.O.P.No.401 of 2010, dated 20.08.2013 and allow the appeal.

For Appellant :Mr.C.Jawahar Ravindran

For Respondent No.1:Mr.M.P.Senthil

ORDER

This appeal arises out of the Award passed by the Motor Accident Claims Tribunal-cum-Principal Sub Court, Tirunelveli made in M.C.O.P.No.401 of 2010, dated 20.08.2013.

2.M.C.O.P.No.401 of 2010 was filed by the first respondent claiming compensation of Rs.5,00,000/- for the injuries sustained in the Motor Vehicle Accident. The case of the claimant is that on 08.04.2010 at about 5.15p.m. he was riding a motorcycle bearing Registration No.TN 72 AE 4331. One Sintha Shek Mathar was travelling as a billion rider. When they were proceeding in front of Tirunelveli Medical College Gents Hostel from East to West direction, a Hyundai Car, bearing Registration No.TN 69 V-3434 came in a rash and negligent manner in Terrific speed from opposite direction and dashed against the motorcycle. As a result of which, the rider and billion rider of the motorcycle thrown away and sustained grievous injuries. Immediately, they were admitted to Tirunelveli Medical College Hospital and thereafter, he took treatment at Thiraviam Hospital, Nagercoil. It is alleged that the accident occurred due to the negligence of the driver of the car.



3.The appellant has resisted the claim petition disputing the age, income of the claimant and the manner of the accident and also their liability to pay compensation to the claimant.

4.The claimant, to substantiate his case, examined himself as P.W.1 and he has narrated the manner of the accident. P.W.1 has also produced the Ex.P1 the copy of the FIR, Ex.P.2 observation mahazar, Exs.P3 & P4 the judgments passed by the criminal Court and Ex.P.5 the report of the Motor vehicle Inspector. The Tribunal based on the oral and documentary evidence held that the driver of the car caused the accident.

5.The specific contention of the appellant is that on the date of accident, the rider of the offending vehicle did not have valid driving licence. In support of their case, the appellant examined Junior Assistant from Regional Transport Office, Kovilpatti, as R.W.1. R.W.2 is the Special Sub Inspector, Tirunelveli Traffic Investigation Wing and R.W.3 is the Deputy Manager of the Insurance Company. The Tribunal accepting the evidence of the Insurance Company came to the conclusion that the Rider, who was riding the vehicle was not having a valid driving licence, in violation of the policy condition and the provisions of the Motor Vehicles Act. So, while awarding compensation of Rs.6,05,000/- directed the appellant to pay the compensation and then recover from the owner of the vehicle. Challenging the award, the appeal is preferred.

6. Mr.C.Jawahar Ravindran, learned counsel for the appellant would submit that even after holding that the driver was not having driving licence, the Tribunal erroneously held that the appellant is liable to pay compensation and the Tribunal ought to have exonerated the appellant from the liability.

7.Mr.M.P.Senthil, learned counsel for the first respondent made submissions in support of the finding of the Tribunal.

8. It is seen from the records that the claimant in this case is a third party. The Tribunal, having found that the offending vehicle had Insurance coverage and the claimant is a third party, has rightly directed the Insurance Company to pay and later recover from the owner.

9. It is settled position of law that in the case of claim made by the third party, even if there is any violation of the policy conditions, the Insurance Company has to pay the award amount to the claimant and thereafter, recover the same from the owner of the vehicle.

<https://hcservices.courts.gov.in/hcservices/> The Tribunal based on the evidence has awarded compensation of Rs.6,05,000/-. In my considered opinion, the award is just and reasonable and therefore, the award is confirmed.



11."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 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."

12. In the result, the award of the tribunal is confirmed and the appellant is directed to pay the award amount to the claimant at the first instance and thereafter, recover the same from the owner of the vehicle as per the mode incorporated in Shri Nanjappan case referred to above.

13. With the above observation, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To
The Principal Sub Judge / Motor Accident Claims Tribunal,
Tirunelveli.

COPY TO:

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

+1 CC to Mr.C.JAWAHAR RAVINDRAN, Advocate, SR No.42476

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