BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD)No.632 of 2015
and
C.M.P.(MD).No.7765 of 2016
and
M.P.(MD).No.2 of 2015

The Branch Manager,
The Oriental Insurance Company Limited,
P.K.N.School Building 1st Floor,
306/18, Madurai Road,
Thirumangalam,
Madurai District. .. Appellant/2nd Respondent.

Vs.

1.Chinnammal
2.Solai
3.Arumugam
4.Murugesan,S/o.Sooran, ..Respondents 1 to 4/ Petitioners 1 to 4
5.Murugesan,S/o.Subbaiah, ..5th Respondent/1st Respondent.

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, against the fair and decretal order, dated 30.09.2013, made in M.C.O.P.No.506 of 2012 on the file of the Motor Accidents Claims Tribunal cum-Additional District Judge, Pudukkottai.

For Appellant : Mr.K.Bhaskaran
For Respondents : Mr.M.Suresh
For RR 1 to 4
For R5- no appearance

JUDGMENT

Aggrieved over the award passed by the Motor Accident Claims Tribunal/Additional District Court, Pudukkottai, in M.C.O.P.No.506 of 2012, the insurance Company has preferred this appeal.

2. Heard Mr.K.Bhaskaran learned counsel appearing for the appellant and Mr.M.Suresh, learned counsel appearing for the respondents 1 to 4 and perused the records. There is no representation for the 5th respondent.

3.The brief facts are that on 16.09.2010 at about 07.30 a.m., when the deceased Sooran @ Soorakavundar was proceeding by foot on the side of the Pudukkottai-Trichy Main Road, near Annapatti Junction, a motorcycle bearing Reg.No.TN-59-M-3145 came in a rash and negligent manner, dashed against him. In the impact, the deceased sustained grievous injuries and he was taken to Pudukkottai Headquarters Hospital and thereafter on the way to Thanjavur Medical College Hospital, he has succumbed to the injuries.

4. The legal heirs of the deceased filed a petition in M.C.O.P.No.506 of 2012, claiming compensation of Rs.5 lakhs, on the ground that the accident had taken place due to the negligence of the driver of the motorcycle.

5. The appellant opposed the claim petition, stating that the deceased in his old age, suddenly attempted to cross the road and he himself invited the accident. Further, it is stated that the rider of the motorcycle did not have valid driving licence, at the time of accident. So, they are not liable to pay compensation.

6. Before the Tribunal, in order to establish their case, the claimants examined two witnesses and marked Exs.P1 to P8. On the side of the appellant, two witnesses were examined and two documents were marked.

7. Ex.P1, the First Information Report would show that a criminal case was registered against the driver of the motorcycle. PW1 deposed the manner of the accident. The Tribunal, based on the evidence of PW1 and Ex.P1, rightly came to the conclusion that the accident had taken place due to the negligence of the driver of the motorcycle.

8. PW2 deposed that the deceased was a wholesale cattle merchant and he was earning Rs.7000/- per month. Ex.P5 would show that the claimants are the legal heirs of the deceased. The claimants have stated that on the date of accident, the deceased was 68 years old. The Tribunal based on Exs.P3 and P4, fixed the age of the deceased at 70 years and fixed the annual income at Rs.48,000/- and after deducting 1/3rd for his personal expenses, awarded Rs.1,60,000/- by applying multiplier of 5.

9. In addition, the Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of Estate, Rs.10,000/- towards loss of consortium to the first claimant and Rs.50,000/- towards loss of love and affection. The Tribunal has totally awarded a sum of Rs.2,35,000/- along with interest at the rate of 7.5% per annum.

10. The Tribunal has awarded the amount in the following heads:

HEADS	AMOUNT Rs.
for Loss of income	1,60,000/-
for Funeral Expenses	5,000/-
for Loss of Estate	10,000/-
for Loss of Consortium to the first claimant	10,000/-
for Loss of love and affection	50,000/-
TOTAL	2,35,000/-

Challenging the amount, the appellant has filed this appeal.

11. The evidence of RW1 and RW2 would show that the driver of the motorcycle was not having valid and effective driving licence on the date of accident. Since, the claimants are third parties, the Tribunal has directed the appellant to pay the award amount to the first claimant and thereafter to recover the same from the owner of the vehicle.

12. It is settled law that even if there is any violation of policy condition, in respect of the claim made by the third parties, the insurance company has to pay the award amount to the claimants and thereafter recover the same from the owner of the vehicle.

13.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."

14. In my considered opinion, the award of the Tribunal is fair and reasonable and hence the same is confirmed. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petitions are closed. No Costs. However, the Appellant Insurance Company is at liberty to recover the award amount from the insured as per the law laid down by the Hon'ble Supreme Court in Nanjappan's case cited supra.

15. At this stage, Mr.K.Baskaran, learned counsel for the appellant would submit that the entire award amount has been deposited. In view of the disposal of the appeal, the first claimant is permitted to withdraw the entire award amount.

Sd/
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To
Additional District Judge,
Motor Accidents Claims Tribunal,
Pudukkottai.

+1CC to M/S. K.Bhaskaran, Advocate, SR.No. 46497
+1CC to M/S.M.Suresh, Advocate, SR.No. 46756

C.M.A.(MD)No.632 of 2015
and
C.M.P.(MD).No.7765 of 2016
and
M.P.(MD).No.2 of 2015
23.08.2016

PJL
SD/PV/SAR-II/17.10.2016/4P/4C