BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2016

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD).No.956 of 2014

THE DIVISIONAL MANAGER
M/S.UNITED INDIA INSURANCE CO.LTD.
SALAI ROAD DINDIGUL & DISTRICT. .. APPELLANT/3rd RESPONDENT

Vs

1 RAMU THEVAR @ RAMAN ...RESPONDENT/CLAIMANT
2 SONAIMUTHU ...RESPONDENT/1st RESPONDENT
3 P.PAPPA .. RESPONDENT/2nd RESPONDENT

PRAYER : Appeal is filed under Section 173 of Motor Vehicle Act, against the Judgment and Decree dated 06.12.2013 made in MCOP NO.2 of 2012 on the file of the MACT (Additional Sub Court), Dindigul.

For Appellant : Mr.B.Rajesh Saravanan
For R-1 : Mr.A.Saravanan
For R-2 & R-3 : No appearance.

JUDGMENT

This appeal is directed against the award passed by the Motor Accident Claims Tribunal, Additional Subordinate Court, Dindigul, in M.C.O.P.No.2 of 2012, dated 6.12.2013.

2. Heard, Mr.B.Rajesh Saravanan, learned counsel for the appellant and Mr.A.Saravanan, learned counsel for the first respondent and perused the records.

3. According to the claimant, on 26.10.2008 at 5.30 p.m., the claimant was proceeding on Ottanchathiram-Sempatty main road by foot and when he was nearing Sriramapuram Ajees Kalyana Mandapam, a motor cycle bearing Registration No.TN 67-H-5216 came in a rash and negligent manner from the opposite direction, dashed against the claimant. In the accident, he sustained grievous injuries and fracture on his left leg. The claimant filed a petition, claiming compensation of Rs.5,00,000/-, alleging that the driver of the motor cycle has caused the accident.

4. The appellant resisted the claim petition disputing the age, income and occupation of the claimant and also their liability.

5. It is the specific case of the appellant that the driver of the motor cycle did not have valid driving licence on the date of accident and therefore, they cannot be fastened with any liability.

6. The learned counsel for the appellant would submit that the appellant has not questioned the quantum, but this appeal is filed only challenging their liability. The learned counsel would further submit that immediately after the accident, the Insurance Company sent notices to the owner as well as the driver of the motor cycle asking about the particulars of the driving licence, under Ex.R.1. Though, they received the notices and acknowledged their receipts under Ex.R.3 and Ex.R.4, they have not chosen to send any reply. Further, the licence was not produced during the trial. When the appellant has discharged their responsibility, the Tribunal erred in making the appellant liable to pay the award amount. The learned counsel relied upon the Division Bench decision reported in ***2003(1)M.L.J. 319, National Insurance Company Vs. Samiyathal, Parameswari,*** in support of his contention.

7. In the light of the limited question raised by the appellant/Insurance Company, it is unnecessary to consider the findings with regard to the negligence and the quantum of compensation arrived at by the Tribunal.

8. The appellant in order to prove their defence, examined R.W.1 Mahendran and marked five documents. Ex.R.1 is the Lawyer Notice, Ex.R.2 is the receipt for sending the notice, Ex.R.3 and Ex.R.4 are the acknowledgement cards to show that the appellant has sent notice to the owner of the driver of the motor cycle and Ex.R.5 is the Insurance Policy.

9. In the decision relied on by the learned counsel for the appellant and in similar circumstances, this Court has held that the appellant had discharged their responsibility and made the owner of the vehicle to pay compensation. It would run thus:-

> *"6. ...According to him, their company had sent a notice-Ex.R-2 on 12.01.95 to the driver-Kandasamy to produce his driving licence. Ex.R-2 was returned un-served, and the returned cover has been marked as Ex.R-3. The insurance company had also sent a similar notice dated 29.05.95 to the owner of the lorry-Chinnasamy informing him about the non-production of driving*

licence by the driver and the violation of Motor Vehicles Act and policy conditions, and the same has been marked as Ex.R-4. Since the owner refused to receive the registered notice, the same was returned and the returned cover has been marked as Ex.R-5. It is true that R.W.1 has admitted that the Insurance Company had not taken steps to ascertain from the Regional Transport Office, whether the lorry driver was issued with a driving licence to drive vehicle like lorry. Here, we have to note that after taking the stand in the counter statement that the driver was not possessed with a valid driving licence to drive a lorry, the insurance company has sent registered legal notices to the driver as well as the owner of the lorry. It is also brought to our notice that both the notices were returned un-served. As a matter of fact, the verification of the cover addressed to the owner shows that he refused to receive the same. These materials would show that the insurance company had taken necessary steps to ascertain the fact whether the driver was having a valid driving licence or not? It is not either clear or explained as to why the driver and the owner did not respond to the notice issued by the insurance company. Likewise, they could have appeared before the Tribunal and informed their stand. However, before this Court, the owner of the lorry is represented by a counsel. Even before us, there is no explanation or information regarding the stand taken by the insurance company, namely, whether the driver was having a valid licence at the time of the accident to drive a lorry. In such a circumstance, as rightly contended by the learned counsel for the appellant/insurance company, though the appellant had discharged the initial responsibility in proving the fact that the driver of the vehicle had no valid driving licence, the said fact had not been *discharged either by the claimants or by the owner of the vehicle. ...After referring to the decision of the Supreme Court in NEW INDIA ASSURANCE COMPANY, SHIMLA v. KAMLA AND OTHERS, the Division Bench has held that, "the insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured, if there is violation of any policy condition". The Division Bench has also held that "the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to third parties, if there was any breach or violation of the policy condition on account of the vehicle being driven without a valid licence. "We are in respectful agreement with the above view. In the present case, we have already referred to the specific stand taken by the insurance company in their counter statement, the evidence of R.W.1, their officer, Exs.R-1 to R-5, and the conduct of the driver and the owner in not responding to the request of the insurance company for production of valid licence to drive a lorry. Accordingly, as observed by the Supreme Court in (cited supra), we hold that the insurance company is liable to pay compensation to the claimants-respondents 1 to 4 herein and on account of violation/breach of terms of insurance policy, namely, the lorry being driven without a valid licence, the appellant/insurance company is entitled to recover from the insured."*

By applying the principles to the case on hand, I am of the view that the appellant/Insurance Company has proved that in violation of the policy condition, the vehicle was driven by a person, who was not having valid driving licence.

10. It is settled law that though the Insurance Company established violation of the policy condition and in respect of the claim made by the third parties, the Insurance Company has to first satisfy the award and recover the same from the owner of the vehicle.

11. In the Judgment reported in ***(2004) 13 SCC 224*** in the case of ***Oriental Insurance Co. Ltd., Vs. Nanjappan and others***, the Honourable Apex Court made in 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."*

12. In fine, the appeal is allowed in part and the award passed by the Tribunal is confirmed. The appellant/Insurance Company is directed to pay the award amount and recover, it from the insured as per the law laid down by the Hon'ble Supreme Court in ***Nanjappan's case*** cited supra.

13. It is represented by the learned counsel for the appellant that the entire award amount has already been deposited by the appellant and the claimant has already withdrawn 50% of the award amount. In view of the order passed supra, the claimant is permitted to withdraw the entire balance amount along with accrued interest and costs, without filing any formal petition before the Tribunal. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To
The Motor Accidents Claims Tribunal,
Additional Sub Court, Dindigul.

+1 cc to M/S.B.RAJESH SARAVANAN, Advocate Sr.No.39625

+1 cc to M/S.A.SARAVANAN, Advocate Sr.No.40108

C.M.A.(MD).No.956 of 2014
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SMA/PV/01.11.2016:6P/4C