BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD)No.834 of 2016
and
C.M.P.(MD).No.7888 of 2016

Branch Manager,
National Insurance Company Limited,
7-75, T.B.M.Road, Vettumani Junction,
Marthandam-629 165 .. Appellant

Vs.

1.Ashok
2.Murugesan
3.Ramalakshmi
4.Branch Manager,
The New India Assurance Company Limited,
First Floor, Pillars Gate,
Palamour Road, Nagercoil-629 001. .. Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, against the fair and decretal order passed by the learned Chief Judicial Magistrate/Motor Accidents Claims Tribunal, Tirunelveli, made in M.C.O.P.No.400 of 2011, dated 28.12.2012 and allow this appeal with costs.

For Appellant : Mr.J.S.Murali

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Tirunelveli, in M.C.O.P.No.400 of 2011, dated 28.12.2012, the appellant Insurance Company has preferred this appeal.

2. Heard Mr.J.S.Murali, learned counsel appearing for the appellant and perused the records.

3.The brief facts of the case are that on 29.05.2011, at about 04.00 p.m., the claimant was travelling as a pillion rider in a motorcycle bearing Reg.No.TN-75-D-9163 from Thingal Nagar to Eraniel, when they were near the Eraniel Government Higher Secondary School, the driver of the motorcycle suddenly drove in a rash and negligent manner and hit against the vehicle bearing Reg.No.TN-74-W-3139. In the accident, the claimant has sustained injuries and he was immediately taken to Asaripallam Government Hospital at Nagercoil, where he took treatment as in-patient from 29.04.2011 to 02.07.2011. The Eraniel police registered a case against the driver of the motorcycle in Crime No.194 of 2011. The claimant has filed the petition seeking a compensation of Rs.5,00,000/- .

4. The claim was opposed by the appellant stating that the accident occurred due to the negligence of the second respondent herein. It is further stated that the the driver of the motorcycle was drunk at the time of accident and he was also not having valid driving licence. So, they are not liable to pay any compensation.

5. In order to prove the case, the claimant examined 3 witnesses and marked Exs.P1 to P6. On the side of the respondents, 4 witnesses were examined and Exs.R1 to R9 were marked.

6. The claimant examined himself as PW1 and deposed before the Tribunal about the manner of the accident and produced Ex.P1/the First Information Report. The Tribunal accepting the evidence of PW1 and Ex.P1, came to the conclusion that the driver of the motorcycle caused the accident. RWs.1 to 4 have deposed that at the time of accident the driver of the motorcycle did not have valid driving licence. However, they have admitted that the vehicle had the coverage of insurance on the time of accident. Based on the evidence of RW1 to RW4 , the Tribunal came to the conclusion that there are violation of policy condition.

7. Though this appeal has been preferred assailing the award of the Tribunal on various grounds, the learned counsel for the appellant would mainly contend that since the appellant proved the violation of the policy condition, liability cannot be fastened on the insurance company.

8. Indisputably, the claimant is the third party. 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.

9.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."

10. In the case on hand, the Tribunal, while awarding Rs.1,16,450/- together with interest at the rate of 7.5% p.a., directed the appellant to pay the award amount and thereafter, to recover the same from the owner of the vehicle. Therefore, I do not find any merits in the appeal. The award passed by the Tribunal in M.C.O.P.No.400 of 2011, dated 28.12.2012, is fair and reasonable and therefore, the same is confirmed.

11. In fine, this Civil Miscellaneous Appeal is dismissed. The appellant insurance company is directed to deposit the entire award amount together with interest within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the claimant is permitted to withdraw the entire amount without filing any formal petition before the Tribunal. 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. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To
Chief Judicial Magistrate,Motor Accidents Claims Tribunal,
Tirunelveli.
+One cc to Mr.J.S.Murali, Advocate, SR.No.47339
PJL
RL/3C/3P/SK/SKN/SARI/19.10.2016 C.M.A.(MD)No.834 of 2016
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