BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD).No.850 of 2016
and
C.M.P.(MD)No.7952 of 2016

M/s.National Insurance Company Ltd.,
Through its Branch Manager,
333/1, 1st Floor,
Checkalai Road,
Karaikudi. ... Appellant/Respondent No.5

Vs.

1. A.Sothi Ambalam
2. M.Sarasu
3. Chittu
4. Jeya
5. Bosemani
6. Alagu Raja @ Alagu Rajan
7. Kasinathan ...Respondents 1 to 7/Petitioners
8. Kallimuthu ...Respondent No.8/Respondent No.1

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, aggrieved by the Judgment and Decree dated 29.10.2012 passed in M.C.O.P.No.199 of 2009 on the file of the Motor Accident Claims Tribunal, (District Court)Sivagangai.

For Appellant : M/s.P.Malini

JUDGMENT

Aggrieved over the award passed by the Motor Accidents Claims Tribunal(District Court), Sivagangai, in M.C.O.P.No.199 of 2009, dated 29.10.2012, the appellant/Insurance Company has preferred this appeal.

2. Heard the learned counsel appearing for the petitioner and perused the records.

3. The respondents 1 to 7 filed a petition claiming compensation of Rs.3,00,000/-, alleging that on 15.01.2008, the wife of the first claimant and the mother of the claimants 2 to 7,

namely, S.Azhagi was proceeding by foot on Veerappatti main road, when she was nearing the Rice Mill, a motorcycle bearing Registration No.TN 63-F-2853 came in a rash and negligent manner, hit against her. She was immediately taken to Madurai Government Rajaji Hospital, however, she succumbed to the injuries on 18.01.2008.

4. The appellant resisted the claim petition by filing counter stating that the driver of the vehicle did not have valid driving licence. They also disputed the age, income, and occupation of the deceased and prayed for dismissal of the claim petition.

5. Before the Tribunal, the first claimant examined himself as P.W.1 and produced Ex.P.1 First Information Report, Ex.P.3 report of the Motor Vehicle Inspector and Ex.P.4 copy of the final report. The Tribunal based on the evidence rightly came to the conclusion that the driver of the motorcycle caused the accident.

6. P.W.1 has deposed that his wife was working as an agricultural coolie and also a milk vendor and thereby she was earning Rs.3,500/- per month. P.W.1 deposed that the deceased died at the age of 60 years. Based on the evidence of P.W.1 and Ex.P.2 Postmortem Certificate, the Tribunal fixed the age of the deceased as 60 years and assessed the income as Rs.3,000/- per month. After deducting 1/3rd towards her personal expenses, the Tribunal by applying multiplier of '5' awarded Rs.1,20,000/- towards loss of dependency.

7. In addition Rs.10,000/- was awarded to the first claimant for loss of consortium; Rs.35,000/- towards loss of affection; Rs.5,000/- towards loss of income; Rs.5,000/- towards funeral expenses and transportation charges and the Tribunal has totally awarded Rs.1,75,000/- together with interest at 7.5% p.a.

8. Ex.X.1 would show that the driver of the motorcycle, namely, Vijay Anandh born on 17.07.1990 and he obtained licence only on 18.05.2009 and on the date of accident, he was not having valid driving licence. The Tribunal having found that the claimants are third parties and the offending vehicle had a coverage and the appellant has proved the violation of the policy condition, directed the appellant to pay and recover from the owner of the vehicle.

9. The learned counsel for the appellant would submit that the Insurance Company has proved the violation of the policy conditions, therefore the direction to the appellant to pay and recover from the owner of the vehicle cannot be sustained.

10. It is settled law that even though the Insurance Company has proved 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 case on hand, admittedly, the claimants are third parties. Therefore, the Tribunal in my view, rightly directed the appellant/Insurance Company to pay the award amount and recover the same from the owner of the vehicle.

12. 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."

13. The award of the Tribunal is fair and reasonable, which does not warrant interference of this Court. In fine, this Civil Miscellaneous Appeal is dismissed. In view of the dismissal of this appeal, the appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs, if not already deposited, within a period of eight weeks, from the date of receipt of the copy of this Judgment.

14. On such deposit being made, the claimants are permitted to withdraw the entire award amount along with proportionate interest and costs, without filing any formal petition before the Tribunal. The appellant/Insurance Company is at liberty to recover the award amount from the owner/8th respondent as per the law laid down by the Hon'ble Supreme Court in ***(2004) 13 SCC 224 (Oriental Insurance Co. Ltd., Vs. Nanjappan and others).*** No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

pmu

To

The District Judge,
The Motor Accident Claims Tribunal,
Sivagangai.

+1cc to M/s.P.MALINI,Advocate Sr.No. 47185

JAM/11.11.16/DB/4P-3C

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