BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.791 of 2015
and
M.P.(MD)No.1 of 2015

The Oriental Insurance Co., Ltd.,
Rep. by its Branch Manager,
39/40, Workshop Road,
Saratha Shopping Centre,
Simmakkal,
Madurai - 625 001. .. Appellant/2nd Respondent

-Vs-

1.K.Kumuthapriyanaka
2.Minor S.Joselina
3.Minor Niranjan
(Minor respondents 2 and 3 rep. by their mother and guardian 1st respondent S.Kumuthapriyanka) ..Respondent 1 to 3/Petitioners
4.T.Ramamoorthy
(4th Respondent remained exparte before the lower Court. ..Respondent 4/1st Respondent
5.S.Sesuraj @ Karuppiah .. 5th Respondent/3rd Respondent
6.Kulanthaiammal .. 6th Respondent/4th Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 17.12.2014 made in M.C.O.P.No.1774 of 2011 on the file of the Motor Accident Claims Tribunal/District and Sessions Judge (Communal Clash Cases Court), Madurai.

For Appellant : Mr.K.Bhaskaran
For Respondents 1 to 3 : Mr.N.V.Suresh Kumar
For Respondents 5 and 6 : K.Kumaravel

JUDGMENT

The appellant/Oriental Insurance Company Ltd., filed the present C.M.A.No.791 of 2015, challenging the award passed in M.C.O.P.No.1774 of 2011 by the Motor Accidents Claims Tribunal/District and Sessions Judge (Communal Clash Cases Court), Madurai.

2.It is a case of fatal accident in which the deceased sustained multiple injuries and died in a hospital after 2 days. The deceased was working as a Tractor Driver and his monthly salary was Rs.5000/- and he was paid Rs.250/- per day as batta. Considering the facts and circumstances of the case, the Tribunal awarded a total compensation of Rs.11,17,000/-. The appellant Oriental Insurance Company preferred this Civil Miscellaneous Appeal mainly on the ground that the driver did not possess valid licence and the appellant insurance company should be exonerated from its liability.

3.With regard to the quantum of compensation awarded by the Tribunal under various heads, this Court do not find any error. Therefore the only point to be considered is whether pay and recovery has to be ordered. Evidence on record shows that the driver of the vehicle had no valid driving licence at the time of accident, which is in violation of the policy conditions. In respect of the liability of the appellant, this Hon'ble High Court and the Hon'ble Apex Court settled the principle that the claimant is a third party and 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 claimant at the first instance and thereafter, to recover the same from the owner of the vehicle.

4.On this aspect, in the judgment reported in *(2004)13 SCC 224* in the case *of* Oriental Insurance Co. Ltd., vs. Nanjappan and othe*rs,* 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."

5.In view of the settled principles both by this Hon'ble Court and the Hon'ble Supreme Court of India, as this case is one of violation of policy conditions, this Court is inclined to consider the principle of Pay and Recovery.

6.In the case on hand, the Tribunal while awarding Rs.11,17,000/- together with interest at the rate of 7.5% p.a. directed the appellant to pay the award amount and thereafter, recover from the owner of the vehicle. Therefore, this Court finds no merit in the appeal and the award passed by the Tribunal in M.C.O.P.No.1774 of 2011 dated 17.12.2014 on the file of Motor Accidents Claims Tribunal/District and Sessions Judge (Communal Clash Cases Court), Madurai is confirmed.

7.Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected M.P.(MD) No.1 of 2015 is also dismissed.

8.The learned counsel for the appellant/Insurance Company informed that the entire award amount has been deposited before the Tribunal and the 1st respondent/claimant was permitted to withdraw 50% of her share in award amount with proportionate accrued interests and costs and accordingly the appellant Insurance Company is at liberty to recover the award amount from the owner of the vehicle by filing appropriate proceedings before the Executing Court. The shares of the minor claimants are directed to be deposited in a Nationalized bank initially for a period a period of 3 three years, which is renewable thereafter till they attain majority and till such time the interest accrued thereon is permitted to be withdrawn by their guardian/mother 1st respondent once in three months directly from the Bank for maintenance of the minor claimants.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
District and Sessions Judge (Communal Clash Cases Court),
Madurai.

+1cc to Mr.K.Bhaskaran, Advocate in SR.No.65555
+1cc to Mr.K.Kumaravel, Advocate in SR.No.65462
+1cc to Mr.N.V.Suresh Kumar, Advocate in SR.No.65435

C.M.A(MD)No.791 of 2015
and
M.P.(MD)No.1 of 2015
03.11.2016

sj
CSL/EM-MPA/28.12.2016:4P/5C