BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2016

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1438 of 2013
and
MP(MD)No.1 of 2013

The Oriental Insurance Company Limited,
Rep. Through its Divisional Manager,
Bangur Dharmasala Building,
6-A, North Veli Street,
Madurai District. : Appellant/2nd respondent

Vs.

1.Francis Xavier : 1st respondent/Petitioner

2.P.Sathishkannan : 2nd respondent/1st respondent
[2nd respondent remained ex-parte before the lower court]

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in MCOP No.39 of 2012, dated 03.12.2012 on the file of the Motor Accidents Claims Tribunal-cum-Sub Judge, Paramakudi.

For Appellant : Mr.K.Bhaskaran
For 1st Respondent : Mr.D.Senthil
For 2nd Respondent : No appearance

JUDGMENT

This appeal is directed against the judgment and decree passed by the Motor Accidents Claims Tribunal (Subordinate Judge), Paramakudi, in MCOP No.39 of 2012, dated 03.12.2012.

2.MCOP No.39 of 2012 was filed by the first respondent claiming compensation of Rs.6,00,000/- for the injuries sustained in the accident on 15.08.2011. According to the claimant, on 15.10.2011 when he was travelling as a pillion rider in the motor cycle bearing registration No.TN-65-D-9612 on Thiruvarangam-Paramakudi main road from south to north direction, a motor cycle bearing registration No.TN-65-Y-4737, which was coming from the opposite direction in a rash and negligent manner, hit against the motor cycle, in which the claimant was travelling. In the impact, the claimant's right leg got fracture and also sustained crush injuries. He was immediately admitted in Paramakudi Government Hospital and thereafter, he took treatment in a private Hospital at Madurai. A criminal case was registered in Crime No.271 of 2011 under Sections 279 and 338 IPC against the driver of the offending vehicle.

3.The appellant opposed the claim contending that the accident had taken place only due to the negligence of the driver of the vehicle TN-65-D-9612. So, the owner of the vehicle has to be added as a party in the claim petition. It is specially stated that the driver of the offending vehicle did not possess valid driving licence. So, the Insurance Company is not liable to pay any compensation.

4.Before the Tribunal, on the side of the claimant, two witnesses were examined as PW1 and PW2 and marked Exs.P1 to P13. On the side of the Insurance Company, three witnesses were examined as RW1 to RW3 and two documents were marked as Exs.R1 and R2.

5.The Tribunal, upon consideration of the evidence, both oral and documentary and accepting the evidence of the Insurance Company came to the conclusion that the driver of the offending vehicle did not have valid driving licence and awarded compensation of Rs.2,38,988/- with interest @ 7.5% p.a, directing the appellant Insurance Company to pay the award amount and recover from the owner of the vehicle. Questioning the award, the present appeal has been filed.

6.Mr.K.Bhaskaran, learned counsel appearing for the appellant would submit that in para 8 of the judgment, the Tribunal has specifically held that the driver of the offending vehicle was not holding valid driving licence on the date of the accident. So, the liability fastened on the Insurance Company cannot be sustained. It is further submitted that the appellant is not disputing the quantum awarded by the Tribunal, but this appeal has been filed questioning the liability.

7.Mr.D.Senthil, learned counsel appearing for the first respondent would contend that the claimant in this case is a third party. So, the direction issued by the Tribunal need not be interfered with by this court.

8.Heard both sides and perused the materials available on record.

9.In the instant case, as rightly contended by the learned counsel appearing for the appellant, the Insurance company has established before the Tribunal that the driver of the offending vehicle was not having valid driving licence.

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

11.In the case on hand, the Tribunal after considering the facts and circumstances of the case, 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 Hon'ble 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.In such view of the matter, this court does not find any illegality or infirmity in the award passed by the Tribunal. In fine, the appeal is dismissed. The appellant Insurance Company is directed to deposit the entire 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. 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** [***(2004)13 SCC 224]*** cited supra. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Paramakudi.

Copy To: The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to M/s.K.Bhaskaran, Advocate in Sr.No.33120

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CSL/PV/27.12.2016 :4P/4C

Judgment made in
CMA(MD)No.1438 of 2013
24.06.2016