BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.06.2016

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1512 of 2013
and
MP(MD)No.1 of 2013

The Manager,
The Oriental Insurance Company Limited,
DDJ Centre, 1st Floor,
Opp. To Vadasery Bus Stand,
Nagercoil. : Appellant/2nd respondent

Vs

1.Karunakaran : 1st respondent/Petitioner
2.Rabin Nesaray : 2nd respondent/1st respondent
[2nd respondent remained exparte 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.213 of 2010, dated 28.03.2013 on the file of the Motor Accidents Claims Tribunal-cum-Subordinate Judge, Valliyoor.

For Appellant : Mr.K.Bhaskaran

For 1st Respondent : Mr.B.Tamilnidhi

For 2nd respondent : No Appearance

JUDGMENT

Aggrieved over the award of the Motor Accidents Claims Tribunal (Subordinate Judge), Valliyoor, passed in MCOP No.213 of 2010, dated 28.03.2013, this appeal is preferred by the appellant Insurance company.

2.Heard Mr.K.Bhaskaran, learned counsel appearing for the appellant and Mr.B.Tamilnidhi, learned counsel appearing for the 1st respondent and perused the materials available on record.

3.The first respondent filed the claim petition alleging that on 18.02.2010 at about 8.30 p.m., he along with one Manikandan and Suresh was travelling in the Tempo Van bearing registration No.TN-74-P-7863 and when the Van was proceeding on the Tirunelveli-Nagercoil main road, the driver of the Van drove the vehicle in a rash and negligent manner, dashed against the TVS Champ bearing registration No.TN-74-B-4170, which was coming in the opposite direction. In the accident, the petitioner sustained grievous injuries. A claim was made for Rs.10,54,000/-, which was restricted into Rs.5,00,000/- by the claimant.

4.The claim petition was resisted by the appellant Insurance Company contending that due to negligence on the part of the driver of the Van, by over speed and overloading the passengers, the accident had taken place. Further, the driver of the Van was not having valid driving licence. So, the Insurance company is not liable to pay any compensation.

5.The Tribunal, upon consideration of the oral and documentary evidence found that the driver of the Van, who did not have valid driving license, was responsible for the accident. While awarding compensation of Rs.1,82,600/- together with interest @ 7.5% p.a., the Tribunal directed the Insurance company to pay the amount and thereafter recover from the owner of the vehicle.

6.Though the appellant has assailed the award of the Tribunal on various grounds, Mr.K.Bhaskaran, learned counsel appearing for the Insurance Company would mainly contend that the Tribunal having found that the driver of the Van was not having valid driving license at the time of the accident, erred in directing the appellant to pay the compensation amount and then collect the same from the owner of the vehicle.

7.The learned counsel appearing for the first respondent has made submission in support of the finding of the Tribunal.

8.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 Van was responsible for the accident. It is settled law that even the Insurance Company 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 then recover the same from the owner the vehicle.

9.In the case on hand, indisputably, the claimant is a third party. The Tribunal, after considering the facts and circumstances of the case, in my view, has rightly directed the appellant Insurance company to pay the award amount and recover the same from the owner of the vehicle.

10.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."*

11.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(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Valliyoor.

+1 cc to M/S.K.BHASKARAN, Advocate Sr.No.33883

Judgment made in

CMA(MD)No.1512 of 2013
29.06.2016

SMA/GSV-PM/03.11.2016:4P/3C