BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1740 of 2013
and
MP(MD)No.1 of 2013

The Branch Manager,
The Oriental Insurance Company Limited,
Shoba T.S.M Complex,
Railway Station Road Opposite,
Palacadu Town,
Kerala State. : Appellant/2nd Respondent

Vs

1.Mr.Balakrishnan : 1st Respondent/Petitioner
2.Tmt.Rajeswari : 2nd Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in MCOP No.218 of 2010, dated 10.01.2013 on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.

For Appellant : Mr.C.Jawahar Ravindran

For 1st Respondent : Mr.M.Ashok Kumar

For 2nd respondent : No Appearance

JUDGMENT

This appeal is directed against the award passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Virudhunagar District at Srivilliputhur, made in MCOP No.218 of 2010, dated 10.01.2013.

2.According to the claimant/first respondent, on 17.08.2008 at about 3.00 pm, when the he was proceeding by foot in front of Kalyani Kavering Shop in Rajapalayam-Tenkasi Main Road, a TATA Ace Mini Van bearing registration No.TN-67-J-2889 came in a rash and negligent manner without following the traffic rules, dashed against the claimant. Due to the accident, the claimant sustained injuries and he was immediately taken to the Government Hospital, Rajapalayam and after giving first aid, he was admitted at Jawahar Hospital, Rajapalayam for better treatment. He filed the petition claiming compensation of Rs.1,00,000/- alleging that the driver of the Van was responsible for the accident.

3.The claim petition was resisted by the appellant contending that the driver of the Van was not having valid and effective licence at the time of accident. The Inspector of Police, Rajalapalayam South Police Station, filed a charge sheet for the offences under Section 279, 337, 338 IPC r/w 181 of the Motor Vehicles Act. The driver has admitted the offence and paid the fine amount. So, the Insurance Company is not liable to pay any compensation to the claimant. They have also disputed the manner of the accident.

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

5.The tribunal, after considering the oral and documentary evidence, awarded compensation of Rs.56,190/- with interest @ 7.5% p.a.

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

7.The appellant in this appeal has not questioned the quantum, but this appeal is filed only challenging their liability and therefore, this court need not advert into the other findings of the tribunal. The main contention of the appellant is that the tribunal, having come to the conclusion that the appellant established violation of the policy condition, ought not to have issued the direction to pay and recovery.

8.The specific case of the appellant is that the driver of the vehicle did not have a valid driving licence on the date of the accident. The oral evidence of RW1 and Ex.P4 the report of the Motor Vehicle Inspector, Ex.P5 charge sheet would show that the driver of the vehicle was not possessing valid driving licence. The tribunal, accepting the case of the appellant held that the driver was not having valid driving licence on the date of the accident. Pursuant to the finding, directed to pay the award amount and thereafter recover from the owner of the vehicle, however, the decree was not drafted according to the judgment.

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 Van was not having valid driving licence. It is settled law that though the Insurance Company established 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 the vehicle. It is also well settled that the decree is to be drawn in accordance with the judgment.

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(CO)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accident Claim Tribunal,
Virudhunagar District @ Srivilliputhur.

Copy to :
The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to M/s.C.Jawahar Ravindran, Advocate in SR.No.40114
+1 cc to M/s.M.Ashok Kumar, Advocate in SR.No.40093

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TTN/MPA-JK/18.01.2017 : 4P-5C

Judgment made in
CMA(MD)No.1740 of 2013
27.07.2016