BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2016

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1743 of 2013
and
MP(MD)No.3 of 2013

Oriental Insurance Company Ltd.,
through its Divisional Manager,
No.5, G.H.Road,
Theni-625 531. : Appellant/2nd respondent

Vs

1.Bismillah Ayisha
2.Minor Mohammad Abishek :R1 and R2/Petitioners 1 and 2
[Minor 2nd respondent represented through his mother and natural guardian the 1st respondent]

3.Eswaran :3rd respondent/R1

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in MCOP No.60 of 2009, dated 16.02.2012 on the file of the Motor Accidents Claims Tribunal-cum-Subordinate Judge, Uthamapalayam.

For Appellant : Mr.C.Jawahar Ravindran
For Respondents : No Appearance

JUDGMENT

Aggrieved over the award of the Motor Accidents Claims Tribunal (Subordinate Judge), Uthamapalayam, made in MCOP No.60 of 2009, dated 16.02.2012, this appeal has been preferred by the appellant Insurance company.

2.MCOP No.60 of 2009 was filed by the wife and son of the deceased Asanraja, who died in a motor vehicle accident on 05.03.2009, claiming compensation of Rs.10,00,000/-. The case of the claimants is that on 05.03.2009, the deceased along with his brother Kajamydeen riding his motor cycle TVS Star City bearing registration No.TN-58-M-7786 from Bharathiar Matriculation School to his native place Elumalai village. At the time, a mini door van bearing registration No.TN-57-V-5892 came in a rash and negligent manner and hit against the motor cycle. In the impact, the deceased sustained fatal injuries and died on the spot. It is alleged that the driver of the minor door van was responsible for the accident.

3.The claim was resisted by the appellant insurance company by filing a counter stating that one Vanarajan had driven the offending vehicle on the date of the accident without having a valid driving licence and in particular, he did not have batch endorsement. Since, the insured had violated the terms and conditions of the insurance policy, the appellant is not liable to pay the compensation to the claimants.

4.Before the tribunal, on the side of the claimants, two witnesses were examined as PW1 and PW2 and marked documents Exs.P1 to P5 and on the side of the appellant insurance company, two witnesses were examined as RW1 and RW2 and three documents were marked as Exs.R1 to R3.

5.The Tribunal, upon consideration of the oral and documentary evidence, has awarded compensation of Rs.6,47,500/- together with interest @ 7.5% p.a. and directed the Insurance company to pay the amount and thereafter recover from the owner of the offending vehicle.

6.Though the appellant has assailed the award of the Tribunal on various grounds, Mr.C.Jawahar Ravindran, learned counsel appearing for the Insurance Company would mainly contend that the Tribunal having found that the driver of the offending vehicle 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.Heard learned counsel appearing for the appellant and perused the materials available on record.

8.On perusal of Ex.R2 driving licence of Vanarajan, there was no batch endorsement. Ex.R3 report of the Motor Vehicles Inspector would also reveal that the driver was not having any valid driving licence. The tribunal in paragraph No.11 of the judgment came to the conclusion that there was a violation of the policy condition, as the driver did not have valid driving license. Since the claimants are 3rd parties, directed the appellant insurance company to pay the award amount and thereafter recover from the owner of the offending vehicle.

9.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.

10.In the case on hand, the Tribunal after considering the facts and circumstances of the case, directed the appellant Insurance company to pay the award amount and recover the same from the owner of the offending vehicle.

11.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."*

12.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 first claimant is permitted to withdraw the entire amount without filing any formal petition before the Tribunal and the share of the minor claimant is directed to be deposited in any one of the nationalised bank, till he attained majority. The first claimant is permitted to withdraw the interest from the deposited amount once in three months for the welfare of the minor claimant. 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

1. The Subordinate Judge,
   (Motor Accident Claims Tribunal),
   Uthamapalayam.

2. The Record Keeper,
   V.R.Section,
   Madurai Bench of Madras High Court,
   Madurai.

+ 1 CC TO Mr.C.JAWAHAR RAVINDRAN, ADVOCATE IN SR No. 40115

ER
TE/SS-2/SAR-I : 02/01/2017 : 4P/4C

Judgment made in
CMA(MD)No.1743 of 2013 and
MP(MD)No.3 of 2013
27.07.2016