



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.06.2016

CORAM

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A (MD) Nos.307 and 308 of 2013

and

MP (MD) Nos.1 and 1 of 2013

1) CMA (MD) No 307 of 2013

The Oriental Insurance Co. Ltd.,
through its Branch Manager,
Divisional Office,
Post Box No.20,
TSM Complex,
V.H.Road, Palakkad.

: Appellant/2nd respondent

Vs

1.Kumar
2.Murugan
[2nd respondent remained
ex-parte before the lower court]

: 1st respondent/Petitioner
: 2nd respondent/1st respondent

Prayer in CMA(MD)No.307 of 2013: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in MCOP No.608 of 2007, dated 20.11.2009 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Dindigul.

2) CMA (MD) No 308 of 2013

The Oriental Insurance Co. Ltd.,
through its Branch Manager,
Divisional Office,
Post Box No.20,
TSM Complex,
V.H.Road, Palakkad.

: Appellant/2nd respondent

Vs

1.Lakshmi
2.Minor Alagujothi
[Minor Alagujothi represented
by her mother and next Guardian of Lakshmi]

3.Sakkarai thevar

4.Pappathi

5.Murugan

: R1 to R4/Petitioners 1 to 4

: 5th respondent/1st respondent

<https://hcservices.courts.gov.in/hcservices/>
[5th respondent remained ex-parte
before the lower court]



Prayer in CMA(MD)No.308 of 2013: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in MCOP No.609 of 2007, dated 20.11.2009 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Dindigul.

For Appellant : Mr.K.Bhaskaran

For 1st respondent

in CMA(MD)No.307

of 2013 &

For R1 to R4

in CMA(MD)No.308

of 2013

: Mr.S.M.Mohan Gandhi

For Respondent No.2

in CMA(MD) 307/2013

: No Appearance

COMMON JUDGMENT

Aggrieved over the award of the Motor Accidents Claims Tribunal (Principal District Judge), Dindigul, made in MCOP Nos.608 and 609 of 2007, dated 20.11.2009, these appeals are preferred by the appellant Insurance company.

2.According to the claimants, in both the appeals, on 05.10.2006 at about 9.30 p.m., when the deceased Lakshmanan, who is the husband of Lakshmi, the claimant in MCOP No.609 of 2007 and one Kumar the claimant in MCOP No.608 of 2007 were travelling in a moped bearing registration No.TN-60-C-4226 in Anna Nagar-Kandamanur Main Road, a TATA ACE bearing registration No.TN-60-X-4226 came in a rash and negligent manner, hit against them. In the accident, they sustained sustained grievous injuries and thereafter, they were taken to hospital, where the rider of the motor cycle said Lakshmanan succumbed to the injuries. The injured claimant and the legal heirs of the deceased Lakshmanan filed claim petitions seeking compensation of Rs.2,00,000/- and Rs.5,00,000/- respectively.

3.In order to prove their respective claim, on behalf of the claimants, three witnesses were examined and 9 documents were marked as Exs.P1 to P9. The appellant Insurance Company examined two witnesses as RW1 and RW2 and produced Exs.R1 and R2. The tribunal, after analysing the evidence, both oral and documentary came to the conclusion that the driver of the TATA Ace did not have valid licence at the time of accident, therefore, while awarding compensation, directed the Insurance company to pay the amount and thereafter recover from the owner of the vehicle. Aggrieved by the direction, the Insurance Company has preferred



these appeals.

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

5. These appeals have been filed only challenging the liability and the quantum awarded by the tribunal is not under dispute. In the instant case, admittedly, on the date of accident, the vehicle had insurance coverage and the claimants in both the cases, are 3rd parties. The owner of the TATA Ace bearing registration No. TN-60-X-0883 has not filed any appeal.

6. It is settled that in respect of claims made by the 3rd parties, although the insurer proves violation of the terms and conditions of the policy, the award has to be satisfied at the first instance by the Insurance Company and thereafter, recover from the owner of the vehicle.

7. The Tribunal having found that there is a violation of the policy condition, rightly directed the appellant Insurance company to pay the award amount and then recover the same from the owner of the vehicle. This court is of the considered view that the award of the Tribunal is fair and reasonable and the direction to the appellant Insurance Company to pay and recover the award amount from the owner of the vehicle is in consonance with the settled position of law.

8. In the result, both the appeals are dismissed. The appellant Insurance Company is directed to deposit the entire award 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 major claimants are permitted to withdraw the entire amount without filing any formal petition before the Tribunal. The share of the minor claimant shall be deposited in any one of the nationalised bank, till she attained majority as ordered by the tribunal. The Appellant Insurance Company is at liberty to recover the award amount from the owner of the vehicle as per the direction of the Tribunal, by following the mode in **Nanjappan's case [(2004) 13 SCC 224]**. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS II)

/True copy/

Sub Assistant Registrar



To

The Motor Accident claims Tribunal Cum
The Principal District Court,
Dindigul.

Copy To:-

The Section officer,
VR Section/Record Clerk,
Madurai Bench of Madras HighCourt,
Madurai.

+ 1 CC TO M/S S.M.MOHANGANDHI, ADVOCATE, SR.31417
+ 2 CC TO MR.K.BHASKARAN, ADVOCATE, SR.31114, 31115

ER

TE/SS2-KSM : 27/01/2017 : 4P/6C

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