BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.06.2016
CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.346 of 2013
and
MP(MD)Nos.1 and 2 of 2013

The Oriental Insurance Company Limited,
rep. By its Divisional Manager,
Shoba TSM Complex, OPP. Town Railway Station Road,
Palakad. : Appellant/2nd respondent

Vs

1. Minor Nithiya Sankari
[Minor 1st respondent rep. By
her father of Selva Pandi] : R1/Petitioner

2. K.Mari Muthu : R2/1st 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.747 of 2009, dated 27.11.2012 on the file of the Motor Accidents Claims Tribunal-cum-III Additional Subordinate Judge, Madurai.

For Appellant : Mr.K.Bhaskaran
For 1st Respondent : Mr.N.Balakrishnan
For 2nd respondent : No Appearance

JUDGMENT

Aggrieved over the award of the Motor Accidents Claims Tribunal (III Additional Subordinate Judge), Madurai made in MCOP No.747 of 2009, dated 27.11.2012, this appeal is preferred by the appellant Insurance company.

2.The first respondent filed the claim petition alleging that on 28.08.2008 at about 1.30 hours, when she was standing near Anuppanady bus stand, a TATA Mini Auto ACE bearing registration No.TN-59-AH-7331 came in a rash and negligent manner, hit against her. In the accident, she sustained grievous injuries. A claim was made for Rs.3,00,000/-.

3.The claim petition was resisted by the appellant Insurance Company contending that due to negligence of the claimant, the accident had taken place and the driver of the mini Auto was not having valid driving licence. So, the Insurance company is not liable to pay any compensation.

4.The Tribunal upon consideration of the oral and documentary evidence found that the driver of the Mini Auto who did not have valid driving licence, was responsible for the accident. While awarding compensation of Rs.2,17,094/- 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.

5.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 mini auto 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.

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

7.Heard Mr.K.Bhaskaran, learned counsel appearing for the appellant and Mr.N.Balakrishnan, learned counsel appearing for the 1st respondent and perused the materials available on record.

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 mini auto was not having valid driving licence.

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 recovery the same from the owner the vehicle.

10.In the case on hand, the Tribunal after considering the facts and circumstances of the case and also relying upon the decisions of the Hon'ble Apex Court directed the appellant Insurance company to pay the award amount and recover the same from the owner of the 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 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** cited supra. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To
The III Additional Subordinate Judge, Madurai.

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

+ 1 CC TO MRK.BHASKARAN, ADVOCATE IN SR No. 31734/16
ER
TE/NGM-MP/ : 01/08/2016 : 3P/4C

Judgment made in
CMA(MD)No.346 of 2013 and
MP(MD)Nos.1 and 2 of 2013
21.06.2016