BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2016
CORAM:
THE HON'BLE MR.JUSTICE T.MATHIVANAN
CMA(MD)No.605 of 2011
and
M.P.(MD)No.1 of 2011

The Manager,
Bajaj Allianz General Insurance Company Limited,
KMA Complex, 12-G, Ram Nagar,
Madurai. : Appellant/2nd respondent

Vs.

1.Sankar : 1st respondent/Petitioner
2.Elangovan
3.Om Sakthi A Tex,
11, Vivekanandapuram,
Sengunthapuram,
12th Cross, Karur.
4.The Manager,
United India Insurance Co. Limited,
12-A, Kovai Road, Karur. : R2 to 4/R1, R3 and R4

This Civil Miscellaneous Appeal is filed against the judgment and decree, dated 09.11.2010 and made in MACOP No.103 of 2007 on the file of the Motor Accident Claims Tribunal, (Additional Subordinate Court), Karur.

For appellant	: Mr.S.Srinivasa Raghavan
For 1st respondent	: Mrs.K.Hema Karthikeyan
For 2nd respondent	: Mr.B.Saravanan
For 4th respondent	: Mr.A.S.Mathialagan
For 3rd respondent	: No appearance

JUDGMENT

The award, dated 09.11.2010 and made in the claim petition in MCOP No.103 of 2007 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Judge), Karur is under challenge in this Memorandum of Civil Miscellaneous Appeal.

2.The Manager, Bajaj Allianz General Insurance Company Limited, Madurai Branch, who is the second respondent in the claim petition is the appellant herein. The first respondent is the claimant, whereas the second respondent is the owner of the TATA Indica Car involved in the accident, which was insured with the appellant Insurance company at the relevant period.

3.The 3rd respondent herein is the owner of the Two Wheeler viz., Yamaha Crux motor cycle, in which the first respondent/claimant was said to have been travelled. The said motor cycle was insured with the 4th respondent Insurance Company at the relevant point of time.

4.The quantum has not been challenged in this appeal, instead the liability of the appellant Insurance company alone has been challenged.

5.Claiming a sum of Rs.6,00,000/- on all heads, the first respondent/injured had moved the Claims Tribunal (Additional Subordinate Judge), Karur with the claim petition in MCOP No.103 of 2007 for the injuries sustained by him, in a road traffic accident said to have been taken place on 09.06.2006 at 11.00 a.m near Thennilai at Karur.

6.It is alleged that when the first respondent/claimant was proceeding in an Yamaha Crux motor cycle bearing registration No.TN-47-M-7395 on the extreme left side of the road near the above said place viz., Thennilai at Karur, a TATA Indica Car bearing registration No.TN-47-F-7171,which was driven by its driver in a rash and negligent manner, had hit against the motor cycle and on account of this reason, the first respondent, who is the rider of the motor cycle, had sustained fracture on his both legs and several injuries on all over his body.

7.While the respondents 1 and 3 in the claim petition were remaining ex-parte, the appellant Insurance company, being the 2nd respondent in the claim petition and the 4th respondent, who is the insurer of the two wheeler, had alone contested the claim of the first respondent.

8.The Appellant Insurance company had mainly contended that the insured, who is the 2nd respondent herein had violated the policy condition and that his act was against the provisions of section 3 and 4 of the Motor Vehicles Act.

9.The appellant had also contended that since, the insured had violated the policy condition, the liability between the appellant Insurance company and the insured had become cease to exist and that the driver of the TATA Indica Car did not possess any valid driving licence to drive a particular type of the vehicle at the material time.

10.The appellant had also contended that as per the provisions of section 3 and 4 of the Motor Vehicles Act, the owner of the vehicle should authorise only the valid driving licence holder to drive the vehicle. For the above said two reasons, the appellant Insurance company had disowned its liability.

11.The Claims Tribunal, based on the evidences both oral and documentary, had proceeded to award a total sum of Rs.1,85,300/- directing the 2nd respondent herein, who is the owner of the TATA Indica Car bearing registration No.TN-47-F-7171 and the appellant Insurance Company to pay this amount to the first respondent injured jointly and severally with interest at the rate of 7.5% per annun from the date of filing of the petition, till realization of the amount along with costs, excluding the interest for the future medical expenditure. The claim petition as against the respondents 3 and 4 herein was dismissed.

12.What Mr.S.Srinivasa Raghavan, learned counsel appearing for the appellant Insurance company would contend that is despite a contention was projected saying that the appellant Insurance company was not liable to pay any amount towards compensation to the injured as the second respondent herein being the owner of the Car had violated the policy condition, the Tribunal had lost sight upon this contention and failed to consider.

13.The learned counsel has also submitted that since the second respondent/owner of the Car had violated the policy condition, the appellant Insurance company might not be compelled to indemnify the loss of the owner of the Car and therefore, he has submitted that the finding of the Tribunal fastening the liability on the appellant Insurance company ought to have been set aside and the claim petition as against the appellant Insurance company might be dismissed.

14.But the learned counsel appearing for the first respondent injured has submitted that in any case, it was the statutory right of a third party to recover the amount of compensation so awarded from the insurer and that it was for the insurer to proceed against the insured for recovery of the amount in the event of violation of any policy condition.

15.In this connection, this court would like to have a reference to the decision of the Apex Court in (2013) 7 SCC 62 between S.Iyyapan Vs. United India Insurance Co. Ltd., and another, wherein it has been held in paragraph 17 as follows:-

> "17.Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,
>
> (i) the vehicle was not driven by a named person.
>
> (ii) it was being driven by a person who was not having a duly granted licence, and
>
> (iii) person driving the vehicle was disqualified to hold and obtain a driving licence.
>
> Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

16.It is generally understood that if the owner of the vehicle is directed to pay the compensation to the affected persons, they may not be able to get the benefit of the award immediately. The insurance company is an affluent corporate body and can pay the amount to the claimants and recover the same from the owner of the vehicle in the later stage by way of filing execution petition without actually filing a suit for recovery of amount. Since the provisions of the Motor Vehicles Act are benevolent provisions, there is nothing wrong to direct the appellant insurance company to pay the award amount to the claimant and recover the same from the owner of the vehicle in the later stage through an execution proceedings without actually filing a suit for recovery of the same.

17.Keeping in view of the above facts, this Court finds that the appeal is liable to be dismissed and accordingly, the same is dismissed. The award passed by the Tribunal in the claim petition in MCOP No.103 of 2007 is confirmed. The appellant/Insurance company is directed to deposit the entire award amount within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier and on such deposit being made, the first respondent/injured is entitled to withdraw the entire amount along with the accrued interest and costs without actually filing an application seeking permission. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AE)

/True copy/

Sub AssistantRegistrar

To
The Motor Accident Claims Tribunal,
Additional Subordinate court, Karur.

+1cc to Mr.S.Srinivasaraghavan, Advocate SR.No.485
+1cc to Mr.K.Hemakarthikeyan, Advocate SR.No.533
+1cc to Mr.B.Saravanan, Advocate Sr.No.847
+1cc to Mr.A.S.Mathialagan, Advocate Sr.No.566

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CMA(MD)No.605 of 2011
Date :05.01.2016