IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2602 of 2015
and M.P.No.1 of 2015

National Insurance Company Limited,
No.74A, Paramathi Road,
By its Divisional Office
Namakkal Town & District. ... Appellant/2nd Respondent

versus

1. Minor Adchyath Dev
Rep. by his mother Amudha ... 1st Respondent/Petitioner

2. K.Alagumalai ... 2nd Respondent/1st Respondent
(R2 remained ex parte before
the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.12.2013 made in M.C.O.P.No.412 of 2013 on the file of the Motor Accident Claims Tribunal (Additional District Court), Namakkal.

For Appellant : Mr. K.Padmanabhan
For R1 : Mr. Ma.P.Thangavel

JUDGMENT

The petitioner, Minor Adchyath Dev, aged about 1 ½ month, met with an accident on 05.01.2012 and sustained grievous injuries. Hence, his mother, in the capacity of representative of the injured, filed a claim petition in M.C.O.P.No.412 of 2013 before the Motor Accident Claims Tribunal (Additional District Court), Namakkal, claiming compensation of Rs.3,00,000/-.

2. As against the claim made, the Tribunal, on consideration of oral and documentary evidence, has awarded a sum of Rs.1,58,900/-, payable by the second respondent Insurance Company, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The break-up details of the compensation read as under:

For injuries	-	Rs. 10,000/-
Transport expenses	-	Rs. 10,000/-
Extra nourishment	-	Rs. 30,000/-

Medical expenses	-	Rs. 8,867/-
Pain and sufferings	-	Rs. 35,000/-
Disability	-	Rs. 40,000/-
Loss of amenities	-	Rs. 25,000/-
Total	-	Rs.1,58,867/-

Challenging the quantum of compensation as well as the liability, the Insurance Company has filed this appeal.

3. The learned counsel appearing for the appellant contended that when the driver of the second respondent, having driving licence only to drive light motor vehicle, but not a passenger/commercial vehicle, the Tribunal either should have fastened the liability on the owner of the vehicle/second respondent herein or ordered the Insurance Company to pay and recover the same from the owner of the vehicle. It is the further contention of the learned counsel for the appellant that the quantum of compensation awarded is excessive and disproportionate to the injuries sustained by the injured.

4. As far as the quantum of compensation is concerned, the minor baby suffered fracture of right parietal bone in skull; P.W.2-Doctor in his evidence that a perusal of the X-ray reveals that the minor baby would suffer memory loss, fits and sleeplessness. Therefore, the doctor has assessed the disability at 20% and had issued Ex.P11, disability certificate.

5. The Tribunal has, after considering the documents and the evidence with regard to injuries suffered by the 1 ½ month old baby in the accident, awarded compensation of Rs.1,58,867/-. This Court, on a perusal of the documents available on record, is of the considered view that the injuries suffered by the baby is on the skull and the injuries are grievous in nature. The evidence of the doctor reveals that the baby would suffer sleeplessness, fits and memory loss. A child, which has just entered the world, is put to much difficulty to carry on its life due to the said accident. Keeping all the above factors in mind, it cannot be said that the compensation awarded is excessive or disproportionate and, accordingly, the same is hereby confirmed.

6. Insofar as the liability is concerned, the learned counsel appearing for the appellant has relied upon the following decisions:

(i) 2013 (2) TN MAC 420 (SC) (United India Insurance Co. Ltd. vs. Sujata Arora & others), wherein, the Hon'ble Supreme Court has held as follows:

"8. We are also fortified in our view in the light of the two Judgments of this Court reported in National Insurance Company Ltd. vs. Laxmi Narain Dhut, 2007 (1) TN MAC 301 (SC) : 2007 (2) TAC 398; and Jawahar Singh vs. Bala Jain and other, 2011 (1) TN MAC 641 (SC) : 2011 (3) TAC 12, where, it has been held that in case it is found that the offending vehicle was driven by driver who was either holding no licence or a fake licence, then it amounts to violation of terms and conditions of Policy and in that circumstances, no liability can be fastened on the Insurance Company."

(ii) 2014 (1) TN MAC 122 (Bajaj Allianz General Insurance Co. Ltd. Chennai vs. Samiyathaal and others), wherein, this Court has held as follows:

"10. Therefore, as per the dictum laid down in National Insurance Co. Ltd. vs. Swaran Singh, 2004 (1) TN MAC 104 (SC); United India Insurance Co. Ltd. vs. S.Saravanan, 2009 (2) TN MAC 103 (DB); Bajaj Allianz General Insurance Company Ltd. vs. P.Manimozhi and others, 2010 (2) TN MAC 542 (SC); Branch Manager, United India Insurance Co. Ltd., Dharmapuri Town vs. Nagammal and others, 2009 (1) TN MAC 1 (FB) : 2009 (1) CTC 1 (FB) : 2009 (1) LW 702; Jawahar Singh v. Bala Jain & Ors., 2011 (1) TN MAC 641 (SC); and Iffco Tokyo General Insurance Co. Ltd. vs. A.Jafer Sadiq and others, 2012 (1) TN MAC 394 (DB), it is settled that if the Insurer establishes that there is a breach of policy condition under Section 149(2)(a)(ii), the Insurance Company though not liable, as it has successfully established its defence, can be directed to pay and recover from the insured. However, the Tribunal being not convinced with the evidences put forth by the Insurance Company directed the Insurance Company to pay the Compensation. Considering the submissions made by the learned counsel for the Appellant-Insurance Company, this Court is of the view that the driver of the vehicle had no valid licence on the date of accident and hence the Insurance Company is directed to pay and then to recover from the owner.

11. In oriental Insurance Co. Ltd. vs. Shri Nanjappan, 2004 (1) TN MAC 211 (SC) : 2004 (1) ACC 524 (SC), mode of recovery is being mentioned and therefore the learned counsel representing the Insurance Company requested this Court to incorporate such mode to enable the Insurance Company to recover the compensation paid from the owner.

12. Therefore, it is held that the Insurance Company is directed to pay and recover the same from

the owner of the vehicle. However, the Insurance Company is entitled to recover the Compensation as per the mode incorporated in Paragraph 8 of Oriental Insurance Co. Ltd. v. Shri Nanjappan, 2004 (1) TN MAC 211 (SC), which is incorporated as follows:

"For the purpose of recovering the Compensation amount 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 insured was the subject matter of determination before the Tribunal and as if the issue is decided against the owner and in favour of the Insurer. A notice shall be issued to the insured to furnish security for the entire amount. 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 of the insured."

(iii) 2014 (1) TN MAC 429 (ICICI Lombard General Insurance Co. Ltd. vs. Kannusamy and others), wherein, this Court has held as follows:

"6. The first and foremost point is whether on the date when the accident took place the Policy was in force? There is affirmative answer from th learned Counsel for the Appellant. Next, whether there is any violation of the terms and conditions of the Policy? The Appellant answered positively. Then the question is whether for that the Claimant has to be penalized? We say negatively. The reason being that he is a third party. The wrongdoer is the vehicle owner/2nd Respondent. He only allowed a person, who is not having the Badge, to drive his goods vehicle. So, he is to be penalised by directing him to pay the compensation amount to the Company. But, before that as per law (Section 149 of the Motor Vehicles Act), the Company shall pay the amount to the Claimant. Therefore, there shall be a direction to that effect.

7. In the result, there shall be modification in the Award of the Tribunal. The Appellant is entitled to recover the entire Compensation amount from the 2nd Respondent. For this, the Appellant need not file any suit, but based on the direction in this Appeal, it

can file Execution Petition before Execution Court. The 1st Respondent is permitted to withdraw the entire amount, less amount, if any already withdrawn. No costs."

A perusal of the above decisions are fully applicable to the facts of the present case.

7. Even though the Insurance Company has submitted in its counter affidavit that the driver had no driving licence to drive a commercial vehicle with badge. However, RW1 in his evidence has deposed that the driver had a driving licence to drive a commercial vehicle, but, no badge. He has further deposed that the driver did not drive the vehicle without having badge. However, the Tribunal has held that at the time the vehicle met with the accident, as there was no goods in the commercial vehicle and, therefore, there is no violation of policy conditions. In such circumstances, the Tribunal fastened the liability on the Insurance Company. The above finding is put in issue before this Court and this Court is of the considered view that the said finding recorded by the Tribunal is not sustainable.

8. Even though there was no goods in the commercial vehicle at the time of accident, however, the offending vehicle being a commercial vehicle, the driver should have kept the driving licence with badge to drive the commercial vehicle. But, the driver was driving the vehicle with a valid driving licence but not the badge. As per the evidence of RW1, the driver cannot drive the vehicle without the badge. In such circumstances, there is clear violation of terms and conditions of the policy. For violation or breach of policy conditions, the insurer cannot be fastened with liability.

9. In the light of the decisions referred above, as there is a violation of policy condition, the Insurance Company shall pay the compensation to the claimant and recover the same from the owner of the vehicle, i.e., the 2nd respondent herein.

10. In the result, the Civil Miscellaneous Appeal is partly allowed with the above said modification. No costs. Consequently, connected miscellaneous petition is closed.

11. The Insurance Company is directed to deposit the entire award amount, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks

thereafter. The insurance company is granted liberty to recover the compensation from the owner of the vehicle, viz., the 2nd respondent herein in accordance with law.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District Judge
   Motor Accident Claims Tribunal,
   Additional District Court,
   Namakkal.

+1 CC to Mr.K. Padmanabhan, Advocate sr 11964.
+1 CC to Mr.Ma.Pa. Thangavel, Advocate sr 11956.

C.M.A.No.2602 of 2015

AD(CO)
SP(27/04/2018)