BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.44 of 2017
and
C.M.P(MD)No.385 of 2017

Reliance General Insurance Co. Ltd.,
Kanagu Towers,
No.15, APLA,11th Cross,
Thillai Nagar, Trichy,
Trichy District.
Rep. by its Divisional Manager, ... Appellant/2nd Respondent

Vs.

1.Karthik Chandran ... Respondent/Petitioner

2.Kannan ... Respondent/1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decreetal order dated 03.03.2015 made in M.C.O.P.No.111 of 2012 on the file of Motor Accidents Claims Tribunal - Chief Judicial Magistrate, Dindigul.

For Appellant : Mrs.K.R.Shiva Shankari for M/s.S.Srinivasa Raghavan

For Respondents : Mr.R.Karunanidhi for R.1

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JUDGMENT

The accident took place on 14.04.2011 at about 03.00 p.m., near Mookan Thottam on Koovanoothu - Kurumpatti road and it is a case of grievous injury and the claimant sustained multiple injuries all over his body.

2. The claim petition was filed in M.C.O.P.No.111 of 2012 on the file of the Motor Accident Claims Tribunal – Chief Judicial Magistrate, Dindigul. Considering the facts and circumstances of the case, the Tribunal awarded the total compensation of Rs.4,95,000/- (Rupees Four Lakhs and Ninety Five Thousand only) to the claimant. Aggrieved over the same, the appellant-Insurance Company is before this Court.

3. The main grievance of the appellant-Insurance Company is that it is a case of 'No Valid Driving Licence' and though the

Tribunal found that the driver who was driving the vehicle, was in possession of a driving licence, it is the contention of the appellant-Insurance Company that the driver of the second respondent/owner of the offending vehicle did not possess a "Valid Driving Licence" as he had only a driving licence to drive a Light Motor Vehicle and not a Public Service Vehicle and in that event, the appellant-Insurance Company is not liable to pay the compensation and the Tribunal erred in fastening the liability both on the appellant-Insurance Company and the second respondent/owner of the offending vehicle and hence, the Tribunal ought to have considered the 'pay and recovery theory', but had failed to do so. Hence, the present appeal is filed by the appellant-Insurance Company.

4. Mrs.K.R.Shiva Shankari, learned Counsel for the appellant-Insurance Company would submit that the driver of the offending vehicle did not possess an additional licence in addition to a permanent driving licence to drive a Light Motor Vehicle in the form of an endorsement or badge and if no such endorsement or badge is obtained, such a person is incompetent to drive a commercial vehicle/public service vehicle. In support of her contention, she relied upon the judgment of the Honourable Supreme Court in Oriental Insurance Co. Ltd. v. Angad Kol & others reported in 2009 (1) TN MAC 242 (SC), wherein it is held as follows:

> "10. The distinction between a 'light motor vehicle' and a 'transport vehicle' is, therefore, evident. A transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be obtained. The distinction between a 'transport vehicle' and a 'passenger vehicle' can also be noticed from Section 14 of the Act. Sub-section (2) of Section 14 provides for duration of a period of three years in case of an effective licence to drive a 'transport vehicle' whereas in case of any other licence, it may remain effective for a period of 20 years'.

5. Heard the learned Counsel for the appellant-Insurance Company and perused the materials available on record.

6. The quantum of compensation awarded by the Tribunal is not in dispute and the only question to be decided, is whether the Tribunal is right in holding that the driver of the offending vehicle was having a valid driving licence at the time of the accident?

7. In the instant case, as rightly contended by the learned Counsel appearing for the appellant Insurance Company, the Tribunal erred in holding that the eligibility criteria for obtaining the licence to drive a Light Motor Vehicle as well as

the Public Service Vehicle are one and the same and therefore, this Court finds that the driver of the offending vehicle was not having a valid driving licence. Therefore, the finding of the Tribunal that the driver of the offending vehicle was holding a driving licence to drive either the Light Motor Vehicle or the Public Service Vehicle, is liable to be set aside and accordingly, the same is set aside.

8. 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 of the vehicle.

9. In Oriental Insurance Co. Ltd., vs. Nanjappan and others reported in (2004) 13 Supreme Court Cases 224, the Honourable Supreme Court has held as follows:

> "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."

10. In the light of the ratio laid down by the Honourable Supreme Court in the above decision, this Court finds that the driver of the offending vehicle did not possess a "Valid Driving Licence" to drive the said vehicle at the time of the accident and

the second respondent/owner of the offending vehicle is liable to pay the compensation. However, the appellant-Insurance Company is liable to indemnify the second respondent/owner of the offending vehicle. The award of the Tribunal in all other aspects, stands confirmed.

11. In the result, this Civil Miscellaneous Appeal is partly allowed to the extent indicated above. The appellant-Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.111 of 2012 on the file of Motor Accidents Claims Tribunal - Chief Judicial Magistrate, Dindigul, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs to the Personal Savings Bank Account Number of the first respondent/claimant, through RTGS/NEFT system, after getting his Account Details, within a period of two weeks thereafter. Further, the appellant-Insurance Company is at liberty to recover the award amount along with accrued interest and costs from the insured, namely, the second respondent herein/owner of the offending vehicle, as per the law laid down by the Honourable Supreme Court in Nanjappan's case (cited supra). No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate
Motor Accident Claims Tribunal, Dindigul.

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

+1CC to M/S.S.Srinivasaraghavan, Advocate, SR.No. 13536
+1CC to M/S.R.Karunanidhi, Advocate, SR.No. 13431

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AM/SKN RSK/SAR 2/25.04.2017/2P/5C