



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2017

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.1467 of 2016

and

C.M.P. (MD) No.12253 of 2016

The Divisional Manager,
New India Assurance Co. Ltd.,
43-A/2, Zeeman Centre,
Promanade Road, Cantonment,
Thiruchy.

.. Appellant/2nd Respondent

Vs.

1. Minor Selvaraj
S/o.Kathaiyya
Rep. by his mother Anjalai,

.. 1st Respondent/Petitioner

2. Ponnaiah
S/o.Adaikkalam

.. 2nd Respondent/1st Respondent

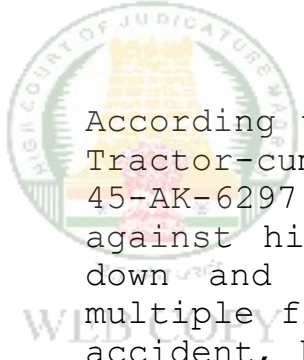
Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree, dated 22.12.2014, passed in M.C.O.P.No.287 of 2011, by the learned Additional District Judge (Motor Accident Claims Tribunal), Pudukottai.

For Appellant : Mr.S.Ramesh
For Respondent No.2 : Mr.B.Jameel Arasu

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree, dated 22.12.2014, passed in M.C.O.P.No.287 of 2011 by the learned Additional District Judge (Motor Accident Claims Tribunal), Pudukottai.

2.The appellant/Insurance Company is the second respondent in M.C.O.P.No.287 of 2011. Originally, the first respondent filed the claim petition in M.C.O.P.No.323 of 2009 before the Principal District and Sessions Court, Pudukottai, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident occurred on 10.06.2009 at 03.30 p.m. Subsequently, the said claim petition was transferred to the Additional District Court, Pudukottai and renumbered as M.C.O.P.No.287 of 2011.



According to the first respondent, the second respondent drove the Tractor-cum-Trailer bearing Registration Nos.TN-45-A-2094 and TN-45-AK-6297 respectively, in a rash and negligent manner and dashed against him. Due to the said impact, the first respondent fell down and tyre of the Tractor ran over him and he sustained multiple fracture and injuries all over his body. At the time of accident, he was aged 10 years. He was admitted in the Government Head Quarters Hospital at Pudukottai. Subsequently, he was taking treatment in Government Medical College Hospital at Thanjavur, for three months, as inpatient. Due to the accident, the first respondent was not able to stand and do any work as done prior to the accident. Therefore, he claimed a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident occurred on 10.06.2009.

3.The second respondent remained ex-parte before the Tribunal.

4.The appellant filed counter affidavit and submitted that no such accident occurred as alleged by the first respondent/petitioner. No certificate was produced for the injuries and no medical bills and receipts were produced by the first respondent to substantiate his case and in any event, the compensation claimed is excessive. There was no Insurance Policy in respect of the Trailer of the Tractor. The second respondent did not have driving licence. Therefore, the appellant is not liable to pay any compensation and prayed for dismissal of the claim petition against the appellant.

5.Before the Tribunal, the mother of the first respondent viz., Anjalai was examined as P.W.1 and marked four documents as Exs.P.1 to P.4. The appellant examined one Vairavan and Kannan as R.W.1 and R.W.2 respectively, and marked two documents as Exs.R.1 and R.2.

6.On contest, the Tribunal considering the pleadings, oral and documentary evidence and Ex.P.1 - F.I.R., came to the conclusion that the accident took place only due to the rash and negligent driving by the driver of the second respondent and held that the appellant has not proved that the second respondent did not have driving licence. The Tribunal also held that as per Ex.R.2, there was a valid Insurance Policy in respect of the Tractor of the second respondent on the date of accident. The first respondent has not produced any document and medical bills with regard to the injuries sustained by him. Therefore, the Tribunal considering the evidence of P.W.1, has awarded a consolidated sum of Rs.65,000/- towards pain and suffering, Transport expenses and Extra nourishment.

7.Against the said judgment and decree, dated 22.12.2014, the appellant has come out with the present Civil Miscellaneous Appeal.



8.The learned counsel for the appellant submitted that no accident took place as contended by the first respondent. The first respondent did not produce any document to substantiate that he sustained multiple injuries and took treatment in the Hospital. The appellant has proved that the second respondent did not have any valid driving licence at the time of accident and also proved that the second respondent violated the conditions of policy by marking Ex.R.1 - A letter from R.D.O. Office and Ex.R.2 - A copy of the Insurance Policy. In any event, the Tribunal ought to have ordered pay and recovery.

9.The first respondent is represented by his mother viz., Anjalai. Though the first respondent's mother received notice and her name is printed in the cause list, she has not chosen to appear either in person or through counsel.

10.The learned counsel for the second respondent contended that the contentions of the appellant that the second respondent did not have any driving licence and the vehicle of the second respondent was not insured with the appellant are not correct. The Tribunal considering all the materials on record, has rightly held that the appellant is liable to pay compensation in view of valid Insurance Policy on the date of accident. The second respondent has not violated any policy condition and prayed for dismissal of the Civil Miscellaneous Appeal.

11.I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on record.

12.From Ex.R.2, it is seen that the vehicle of the second respondent was insured with the appellant at the time of accident. From Exs.P.1 - F.I.R. and P.4 - Charge Sheet, it is seen that the second respondent was responsible for the accident. The first respondent has produced Ex.P.2 - Wound Certificate. Therefore, the contention of the appellant that no accident occurred as alleged by the first respondent and the first respondent has not suffered injuries, is untenable and the same has been rightly rejected by the Tribunal.

13.The appellant has examined R.W.1 and R.W.2 and marked Ex.R.1 - A letter from the R.D.O. Office and stated that the second respondent did not have driving licence at the time of accident. The Tribunal failed to consider Ex.R.1 and erroneously held that the appellant failed to prove that the second respondent did not have driving licence at the time of accident. In view of Ex.R.1, the said finding of the Tribunal is set aside and I hold that the second respondent violated the policy condition and the appellant is not liable to pay compensation.



14. 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.

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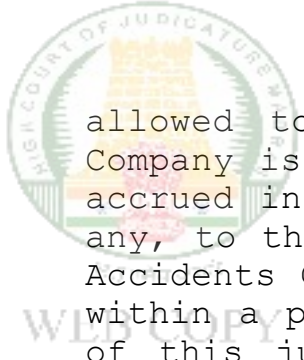
15. In ***Oriental Insurance Co. Ltd., vs. Nanjappan and others reported in (2004) 13 Supreme Court Cases 224***, the Honourable Supreme Court has held as follows:

"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."

16. 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.

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17. 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.287 of 2011 on the file of Motor Accidents Claims Tribunal - Additional District Court, Pudukottai, 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 deposit the said amount to the credit of C.M.A.(MD)No.1467 of 2016 before the Indian Bank Branch, Madurai Bench of Madras High Court, Madurai, in a Fixed Deposit, renewable periodically till the first respondent/claimant attains majority, within a period of **two weeks thereafter**. The mother of the first respondent viz., Anjalai is permitted to withdraw interest on the share of her minor child, once in three months from the bank directly. 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 (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Judge
[Motor Accident Claims Tribunal],
Pudukottai.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.
3. The Branch Manager,
Indian Bank,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.V.RAGHAVACHARI, ADVOCATE IN SR No. 14234
+ 1 CC TO Mr.B.JAMEEL ARASU, ADVOCATE IN SR No. 14548

SMN2

TE/RSK : 02/05/2017 : 5P/6C

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