



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :22.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No. 589 of 2017

and

C.M.P. (MD)No.6206 of 2017

National Insurance Company Limited,
No.3, North Veli Street,
Madurai -625 001.
Represented by its,
Divisional Manager.

... Appellant / Respondent No.2

Vs.

1.M.Chandra ... Respondent No.1 / Petitioner No.1
2.M.Anandaraj ... Respondent No.2 / Petitioner No.2
3.Minor.Sudhakaran
(Minor is represented through his
mother and natural guardian Chandra
1st respondent herein) ... Respondent No.3 / Petitioner No.3
4.L.Alagarsamy ... Respondent No.4/Respondent No.1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and award made in M.C.O.P.No. 513 of 2010 dated 30.11.2012 on the file of the Motor Accidents Claims Tribunal, District and Sessions Court, Communal Clash Cases Court, Madurai.

For Appellant :Mr.D.Sivaraman
For R4 :Mr.J.Ramamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Appellant/Insurance Company against the Judgment and award made in M.C.O.P.No. 513 of 2010 dated 30.11.2012 on the file of the Motor Accidents Claims Tribunal, District and Sessions Court, Communal Clash Cases Court, Madurai.

2. It is a case of fatal accident, which took place on 23.08.2009 at about 03.30 p.m. The deceased was travelling as a pillion rider of the first respondent's Bajaj Champion Motorcycle bearing Registration No.TN-58-K-9870 from Melakuilkudi to Nagamalai S.V.N.College. The rider of the Motorcycle was driving in a rash and negligent manner and since he was not able to



control the speed, the vehicle dashed against the wall of the small bridge. Due to the impact, pillion rider was thrown out from the two wheeler and he sustained multiple injuries. Thereafter, he died.

3. The claimants filed an application in M.C.O.P.No.513 of 2010 on the file of the Motor Accident Claims Tribunal, District and Sessions Court, Communal Clash Cases Court, Madurai, seeking compensation.

4. Before the Tribunal, on the side of the claimants, two witnesses as P.Ws.1 and 2 were examined and eight documents as Exs.P.1 to Exs.P.8 were marked. On the side of the Insurance Company, two witnesses as R.Ws.1 and 2 were examined and seven documents as Exs.R.1 to Exs.R.7 were marked.

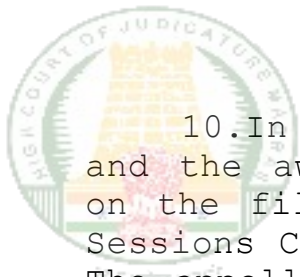
5. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the rider of the vehicle, which is insured with the appellant/Insurance Company and directed the Insurance Company to pay the compensation.

6. Against which, the appellant/Insurance Company has filed this present appeal questioning liability.

7. This Court heard the submissions made by the learned counsel for the appellant/Insurance Company and the learned counsel appearing for the fourth respondent and perused the materials available on record.

8. As per the discussion at page No.6, the policy is in force but the second respondent did not have a valid driving licence. Since the policy is in force and there is violation of policy condition, it is appropriate to direct the Insurance Company to pay the compensation and recover the same from the owner of the vehicle.

9. The Tribunal has rightly directed the appellant to pay compensation at the first instance and then, recover the same from the owner of the vehicle. There is no error in the said finding. It is well settled law that the claimant should not suffer even after obtaining an order for compensation. The provisions relating to the award of compensation are benevolent provisions in favour of claimant. The Hon'ble Apex Court in various Judgments have formulated the policy of "pay and recovery". In the present case, there is no reason to deviate from the principle "pay and



10. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 30.11.2012 passed in M.C.O.P.No.513 of 2010 on the file of the Motor Accident Claims Tribunal, District and Sessions Court, Communal Clash Cases Court, Madurai, is confirmed. The appellant Insurance Company shall deposit the award amount as ordered by the Tribunal to the credit of M.C.O.P.No.513 of 2010, Motor Accident Claims Tribunal, District and Sessions Court, Communal Clash Cases Court, Madurai, within a period of eight weeks from the date of receipt of a copy of this order and in the later stage, the appellant Insurance Company is entitled to recover the same from the owner of the vehicle/fourth respondent, by way of Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in **2004 (2) CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)**. On making such deposit, the major claimants are at liberty to withdraw the award amount along with accrued interest and costs, without filing a formal application seeking permission. The Tribunal is directed to deposit the compensation amount awarded to the minor claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till the minor attains majority. The mother of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of the minor. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To,

1. The Motor Accidents Claims Tribunal,
District and Sessions Judge,
Communal Clash Cases Court, Madurai.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.D.Sivaraman, Advocate Sr.No.80645

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VB/MR/KKR/SAR2/05/12/2017/3P/4C

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