BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.09.2017

CORAM:

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

C.M.A(MD).No.768 of 2017
and
CMP(MD)No.8315 of 2017

The Branch Manager,
National Insurance Company Limited,
K.R.T. Building 1st Floor,
Bharathidasan Salai,
Cantonment,
Trichirappalli-1. ... Appellant / 2nd Respondent

- Vs -

1.Velammal

2.Amuthavalli ...Respondents 1 & 2 / Petitioners

3.Suresh ...3rd Respondent / 1st Respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1751 of 2015, dated 03.02.2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli.

For Appellant :Mr.J.S.Murali

For R1 & R2 :Mr.C.Bharathi

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree in M.C.O.P.No.1751 of 2015, dated 03.02.2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli.

2. The case of the claimants in the petition is briefly as follows:

The accident took place on Vaiyampatti-Palaviduthi road near Manalarampatti tam four road on 16.11.2015 at about 02.30 P.M. The third respondent's driver drove the two wheeler bearing

Regn.No.TN 45 BV 00549 in a rash and negligent manner at a high speed from same direction and dashed against the deceased. Due to the impact the deceased sustained fatal injuries and he was taken to Manapparai Government hospital at Manapparai. But, in spite of the treatment, he died. Hence, the petitioners/claimant claim compensation for an amount of Rs.6,00,000/-.

3. Before the Tribunal, on the side of the petitioner, P.Ws.1 and 2 were examined and Exs.P1 to P4 were marked. On the side of the respondents R.Ws.1 and 2 were examined and Exs.R1 to R5 and Ex.X1. authorisation letter were marked.

4. On consideration of the evidence available on record, the Tribunal, has awarded a sum of Rs.5,78,100/- with interest at the rate of 7.5% p.a. Challenging the said award, the Insurance Company is before this Court.

5. It is the specific case of the appellant/insurance company that the first respondent's vehicle driver did not have the valid driving licence to ride the vehicle. In this regard, he would draw the attention of this Court to the charge sheet filed by the police, wherein, it is stated that the rider did not have a valid licence to drive the vehicle and hence, he prays that pay and recovery may be ordered.

6. Heard the learned counsel appearing for the appellant and perused the materials available on record.

7. On the subject matter, it is apt to mention that in the case of ***National Insurance Company v. Samiyathal & Others*** reported in ***2004(1) TN MAC(DB) 455***, wherein in similar circumstances, the Honourable Division Bench of this Court has held as follows:

> *"6...... In the present case, we have already referred to the specific stand taken by the Insurance Company in their counter statement, the evidence of R.W.1, their officer, Exs.R-1 to R-5 and the conduct of the driver and the owner in not responding to the request of the Insurance Company for production of valid licence to driver a lorry. Accordingly, as observed by the Supreme Court in* **2001 ACJ 843 (cited supra)***, we hold that the Insurance Company is liable to pay compensation to the claimants-respondents 1 to 4 herein and on account of violation/namely, the lorry being driven without a valid licence, the appellant/Insurance Company is entitled to recover from the insured..."*

7.1. In view of the above, the Tribunal ought to have directed the Insurance Company to pay compensation at the first instance and then recover the same from the owner of the vehicle.

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 claimants. 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 of "pay and recovery".

8. In this connection, it is also apt to mention the judgment reported in ***ORIENTAL INSURANCE COMPANY LIMITED V. NANJAPPAN AND OTHERS*** reported in ***2004(2) CTC 464,*** wherein, the mode of recovery has clearly been dealt in paragraph 8 of the judgment, which reads as follows:-

> "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 orders as to costs.
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> Appeal disposed of accordingly."

9. In the light of the authoritative pronouncement of the judgments cited supra, it is the fittest case where pay and recovery can be ordered. Accordingly, in the case on hand, pay and recovery is ordered. Consequently, the appellant / Insurance Company is directed to pay the compensation to the claimants and

recover the same by following the guidelines laid down in the above said Judgment, from the owner of the offending vehicle. Further, the appellant / Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5% p.a. within a period of six weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the claimants are permitted to withdraw the award amount with proportionate interest and costs, without filing any formal petition before the Court below.

In the result, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli.

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

+ 1 cc TO Mr.J.S.Murali, Advocate in SR No. 77369
+ 1 cc TO Mr.C.Bharathi , Advocate in SR No. 76822

ssm
AE/SKN RSK/SAR1/09.11.2017/4P/5C

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