BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.39 of 2015
and
M.P.(MD)No.1 of 2015

M/s.Cholamandalam M.S.General Insurance
Co. Ltd., Rep. By its Divisional Manager,
"Dare House", 2nd Floor, N.S.C. Bose Road,
Chennai 600 001. .. Appellant / 2nd Respondent

Vs.

1.R.Layanal Singh ..1st Respondent/Petitioner

2.G.Suresh .. 2nd Respondent/1st respondent

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree, dated 13.08.2012 passed in M.C.O.P.No.1883 of 2008 by the Motor Accident Claims Tribunal (III Additional Sub Judge), Madurai.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 : Mr.A.Theethar

For R2 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 13.08.2012 made in MCOP No.1883 of 2008 on the file of Motor Accident Claims Tribunal (III Additional Subordinate Judge), Madurai.

2.The case of the claimant is that on 16.06.2008 at about 12.20 Noon, when the petitioner was travelling as a pillion rider in a two wheeler motor cycle bearing registration No.TN 63 B 1897 at the left side of the road at a slow speed, in front of Door No.50, Saraswathi Traders, Corportion shop, West Masi Street, Madurai Town, the first respondent's vehicle bearing registration

No.TN 59 AD 4291 came from the opposite direction in a rash and negligent manner and dashed against the petitioner. As a result of which, he sustained grievous injuries. Hence, he filed a claim petition before the Tribunal claiming a sum of Rs.2,00,000/- as compensation.

3. Before the Tribunal on the side of the petitioners, P.Ws.1 to 3 were examined and Exs.P1 to P8 were marked. On the side of the respondents R.W.1 was examined and Exs.R1 and R2 were marked.

4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimant and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the first respondent vehicle, which is insured with the Insurance Company and directed the appellant/Insurance Company to pay a sum of Rs.2,00,000/-, as compensation, along with interest at the rate of 7.5% p.a.

5.The learned counsel for the appellant draws the attention of this Court to the order of the lower Court, which is extracted below:-

> "8.On the side of the respondent, R.W.1, the Assistant Manager of the 2nd respondent was examined. Ex.R1 copy of Insurance Policy and Ex.R2 copy of the Investigation report were marked. The contention of the 2nd respondent is that the driver of the 1st respondent was not having valid driving license at the time of accident. Even as per Ex.P2 charge sheet, the rider did not have license to drive the vehicle. The 1st respondent remained exparte and hence, it can be safely concluded that the driver of the auto did not have valid license at the time of accident. Since there is a live policy as per Ex.R1 and the same was insured with the 2nd respondent, the 2nd respondent being the insurer is directed to pay the compensation amount of Rs.2,00,000/- to the petitioner and later recover the same from the 1st respondent as per the doctrine of 'pay and recover'.

6.In view of the aforesaid Judgment, since already pay and recovery has been ordered by the Court below, the learned counsel for the appellant would fairly submit that the award of the lower Court may be confirmed, but pay and recovery has to be effected by following the judgment in ***ORIENTAL INSURANCE COMPANY LIMITED V. NANJAPPAN AND OTHERS*** reported in ***2004(2) CTC 464,*** wherein the mode of recovery has been clearly 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.

Appeal disposed of accordingly.”

7.Heard the learned counsel for the appellant and the learned counsel for the first respondent.

8.Considering the submissions made by the learned counsel for the appellant/Insurance Company and following the above Judgment, this Court confirms the order of the Tribunal.

9.In view of the above, the appellant / Insurance Company is directed to pay the compensation to the claimant and recover the same by following the guidelines laid down in the above said Judgment, from the owner of the 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 claimant is permitted to withdraw the award amount with proportionate interest and costs, without filing any formal petition before the Court below.

10.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To,

1. The III Additional Subordinate Judge,
   Motor Accident Claims Tribunal, Madurai.

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

+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.71598
+1cc to Mr.A.Theethar, Advocate Sr.No.71763

RJ2/RMK

VB/GT/SAR4/31.08.2017/4P/5C

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