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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.628 of 2015
and
M.P.(MD) No.2 of 2015

The Oriental Insurance Company Limited,
rep. by its Branch Manager,
3rd Floor, Decnoboles, Begampet,
Hydrabad, Andhra State ... Appellant/2nd Respondent

Vs.

1.Ramar
2.Umaiyaraj
3.Perumalakkal
4.Minor Umaiyaparvathi
5.Minor Murugeswari
(Minors 4 and 5th respondents are
rep. by their father and guardian
1st respondent Ramar) ... 1 to 5 Respondents/Petitioner

6.Sethupandi ...6th Respondent/1st Respondent

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the award dated 30.01.2014 made in M.C.O.P.No.127 of 2012 on the file of the Motor Accidents Claims tribunal cum Subordinate Judge, Aruppukottai.

For Appellant : Mr.K.Bhaskaran
For Respondents : Mr.S.J.Chakkaravarthy for
M/s.Eddy and Embboss Law Firm
for RR1 to 5
No Appearance for R6

JUDGMENT

The Oriental Insurance Company Limited has filed this appeal challenging the fastening of liability on it by award dated 30.01.2014 in M.C.O.P.No.127 of 2012 on the file of the Motor Accidents Claims tribunal cum Subordinate Judge, Aruppukottai.

2.The respondents 1 to 5 are the claimants. The wife of the first respondent Mariammal had travelled as an unauthorised passenger in a goods vehicle. The goods vehicle viz., TATA ACE bearing Registration No.TN 67 AE 7566 belongs to the sixth respondent herein. The Tribunal awarded a sum of Rs.9,79,500/- as

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compensation with interest. The Tribunal applied pay and recover principle and directed the appellant herein to satisfy the award and thereafter, recover the amount from the vehicle owner. Seeking total exoneration of liability, this appeal has been filed by the insurance company.

3.Heard the learned counsel for the parties.

4.It is seen that the Tribunal focussed its attention more on the defence taken by the insurance company that the vehicle in question was driven by a person, who did not have a valid driving licence. In that event, of course, the principle of pay and recovery can be adopted. But, the appellant has specifically contended that the deceased ought to have travelled in the goods vehicle at all. Therefore, there is no statutory liability cast on the insurer to satisfy the award even at the first instance. In support of his contention, the learned counsel would rely on the decisions of the Hon'ble Supreme Court reported in 2008(2) TNMAC 231 – United India Insurance Co. Ltd., Vs. Suresh K.K. and another, III (2002) ACC 753 (SC) – New India Assurance Co. Ltd., Vs. Asha Rani and others and the Full Bench decision of this Court reported in 2009(1) TN MAC 1(FB) – Branch Manager, United India Insurance Co. Ltd., V. Nagammal and others. It has been held by the Hon'ble Supreme Court that the principle of pay and recovery cannot be applied against the insurer in the case of death or injury sustained by the unauthorised passenger while travelling in the goods carrier vehicle. I have no option but to follow the said decision. Therefore, the liability fixed on the appellant insurer by the Tribunal is set aside. The claimants are entitled to proceed against the vehicle owner alone viz., the sixth respondent herein.

5.Accordingly, the award dated 30.01.2014 made in M.C.O.P.No.127 of 2012 on the file of the Motor Accidents Claims tribunal cum Subordinate Judge, Aruppukottai is modified and the sixth respondent alone is liable to pay the compensation and the sixth respondent directed to deposit the entire compensation amount within 12 weeks from the date of receipt of a copy of this order along with interest @ 7.5.% per annum and costs from the date of petition till the date of realization. The claimants are entitled to withdraw the said amount as apportioned by the Tribunal, by filing proper application before the Tribunal. The appellant insurance company is permitted to withdraw the paid amount, if any.

6.The Civil Miscellaneous Appeal is allowed as indicated above. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Aruppukottai.

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

+1cc to M/s. EDDY & EMBBOSS in SR. No. 84108
+1cc to Mr.K.BHASKARAN Advocate in SR. No. 83914

ARUL
JS/SKN.RSK/SAR.1/20.12.2017/3P-5C

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