BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No. 72 of 2015

Minor Thanveer Fathima Rupena,
represented by her guardian
and next friend mother
Noornishabegum. ... Appellant / Claimant

Vs.

1.Selvam
2.The Branch Manager,
Oriental Insurance Company Ltd.,
1858, South Street,
Thanjavur. ... Respondents/ Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decreetal order made in M.C.O.P.No.685 of 2009 dated 10.11.2010, by the Motor Accidents Claims Tribunal (Principal District Judge), Thanjavur.

For Appellant : Mr.G.Karnan
For R1 : No appearance
For R2 : Mr.K.Bhaskaran

JUDGMENT

Being aggrieved over the award passed by the Motor Accident Claims Tribunal-cum-Principal District Judge, Thanjavur. in M.C.O.P.No.685 of 2009 dated 10.11.2010 , the claimant has filed the present appeal.

2.The appellant filed the claim petition in M.C.O.P.No.685 of 2009 claiming a sum of Rs.10,00,000/- (Rupees ten lakhs Only) as compensation for the injuries sustained by the minor claimant in the accident occurred on 25.03.2009. By the award, dated 10.11.2010, the Tribunal awarded a sum of Rs.95,000/- (Rupees ninety five thousand only) as compensation.

3.Facts of the Case:-

According to the claimant, when he was walking on the Thanjavur-Nagapattinam Road along with his mother, a TVS Star City two wheeler bearing Registration No.TN-49-AC-7142 was driven by its rider in a rash and negligent manner and dashed against the claimant, who was studying 4th Standard. Due to the said impact, the right leg was fractured and he sustained multiple injuries. Thereafter, he could not continue his studies. FIR was registered against the driver of the vehicle. The vehicle was insured with the second respondent Insurance Company. Therefore, he filed the claim petition, claiming a sum of Rs.10,00,000/- (Rupees ten lakhs only) as compensation.

4.Before the Tribunal, the mother and guardian of the minor claimant examined herself as P.W.1 and and one Doctor Rathina Bharathy was examined as P.W.2 and marked 12 documents as Ex.A1 to A.12. On the side of the respondents, they did not let in any oral or documentary evidence.

5.The Tribunal, considering the pleadings, oral and documentary evidence, came to the conclusion that the accident took place only due to the rash and negligent driving of the rider of the motorcycle and awarded a sum of Rs.95,000/- (Rupees ninety five thousand only) as compensation to the claimant.

6.I have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record.

7. Though the learned counsel for the appellant/ claimant questioned the quantum of compensation on various grounds, he has specifically argued that the Tribunal has taken 33% disability and granted Rs.35,000/- towards permanent disability, which is very low. As per the judgment of this Court in National Insurance Company Limited v. G.Ramesh and another reported in 2013 (2) TN MAC 583, a sum of Rs.3,000/- (Rupees Three Thousand only) has to be awarded for 1% disability. Therefore, this Court, fixing disability at 33% by calculating Rs.3000/- for 1% of disability, awards Rs.99,000/-.

8. The Tribunal awarded Rs.50,000/- towards attendant charges, extra nourishment and transportation. The Tribunal awarded Rs.10,000/- for pain and suffering. This Court is inclined to enhance the amount under the above heads. Rs,70,000/- is awarded for attendant charges, extra nourishment and transportation instead of Rs.50,000/- and Rs.20,000/- is awarded for pain and suffering instead of Rs10,000/-. Totally, a sum of Rs.1,89,000/- is awarded as compensation.

9.The learned counsel for the appellant contended that the Tribunal has erroneously fixed the liability on the first respondent on the ground that the driver has not renewed his license. In support of his contetion, he would rely on the judgment reported in 2014(1) TN MAC 104(SC) in National Insurance Co. Ltd., Vs. Swaran Singh & Others, wherein it has been held as follows;

36. We may also take note of the fact that whereas in Section 3 the words used are 'effective licence', it has been differently worded in Section 149 (2), i.e., 'duly licensed'. If a person does not hold an effective licence as on the date of the accident, he may be liable for prosecution in terms of Section 181 of the Act but Section 149 pertains to insurance as regard third party risks.

37. A provision of a statue which is penal in nature vis-a-vis a provision which is beneficent to a third party must be interpreted differently. It is also well-known that the provisions contained in different expressions are ordinarily constructed differently.

38. The words 'effective licence' used in Section 3, therefore, in our opinion can not be imported for sub-section (2) of Section 149 of Motor Vehicles Act. We must also notice that the words, 'duly licensed' used in sub-section (2) of Section 149 are used in past tense.

39.Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the rules framed there under despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal term states that the licence remains valid for a period of thirty days from the day of its expiry.

40. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry.

41.If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example when a person is granted a licence for driving a light motor vehicle he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.

42. Furthermore, the insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149 (2) (a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. By reason of the provisions contained in the 1988 Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147 (3) a third party has obtained a judgment against any person insured by the policy in respect of a liability required to be covered by Section 145, the same must be satisfied by the insurer, notwithstanding that the insurer may be entitled to avoid or to cancel the policy or may in fact have done so. The same obligation applies in respect of a judgment against a person not insured by the policy in respect of such a liability, but who would have been covered if the policy had covered the liability of all persons, except that in respect of liability for death or bodily injury.

43. Such a breach on the part of the insured must be established by the insurer to show that not only the insured used or caused or permitted the vehicle to be used in breach of the Act but also that the damage he suffered flowed from the breach.

44. Under the Motor Vehicles Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof.

10, In view of paragraph No.40 of the above said judgement, pay and recovery ought to have been ordered. This Court is inclined to order pay and recovery.

11. The second respondent Insurance Company shall pay compensation at the first instance and then, recover the same from the first respondent. 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 of “pay and recovery”.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the second respondent/Insurance Company is directed to pay the enhanced award amount at the first instance and then, recover the same from the owner of the vehicle/first respondent. The second respondent Insurance Company shall deposit the award amount to the credit of M.C.O.P.No.685 of 2009 dated 10.11.2010,, on the file of claims Tribunal within a period of eight weeks from the date of receipt of a copy of this order and in the later stage, the second responent/ Insurance Company is entitled to recover the same from the owner of the vehicle/first 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 claimant is at liberty to withdraw the entire award amount along with accrued interest and costs, without filing a formal application seeking permission. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To,

The Principal District Judge,
(Motor Accidents Claims Tribunal),
Thanjavur.

+1cc to M/S.K.Bhaskaran, Advocate SR.No. 71142

C.M.A(MD)No. 72 of 2015
08.08.2017

cm
JM/KP/SAR 1/04.10.2017/5P/3C