BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :31.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.16 of 2013
and
M.P.(MD)No.1 of 2013

The Oriental Insurance Company Limited,
Divisional Office,
Tirupur, A.A.Complex,
First Floor, 159, Kumaran Road,
Tirupur-643 601. ... Appellant/2nd Respondent

Vs.

1. Minor.S.Mehala
(Minor 1st respondent through her
father and next friend, A.Boorana Chandran,
S/o.Asupathi Rajan) ... 1st Respondent/Petitioner

2. R.Nithyanathan ... 2nd Respondent/ 1st Respondent
3. S.Kavitha ... 3rd Respondent/3rd Respondent
(R2 & R3 remained ex-parte before
the lower Court)

4. Sri Ram General Insurance Co. Limited,
E-8, EPIP, RIICO, Sitapura,
Jaipur, Rajastan-302 022,
India. ... 4th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award of Rs.1,46,450/- (Rupees One Lakh Forty Six Thousand Four Hundred and Fifty only) made in M.C.O.P.No.187 of 2011, dated 30.03.2012 on the file of the Motor Accident Claims Tribunal-cum-Additional District Judge, (Fast Track Court No-II), Thoothukudi.

For Appellant : Mr.K.Bhaskaran

For R-2 & R-3 : No appearance
For R-4 : Mrs.K.R.Shiva Shankari
for Mr.Srinivasa Ragavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award made in M.C.O.P.No.187 of 2011, dated 30.03.2012 by the Motor Accident Claims Tribunal-cum-Additional District Judge (Fast Track Court No-II), Thoothukudi.

2. It is a case of injury sustained by the injured/claimant in an accident, which took place on 19.10.2010 at about 6.00 hours, at Thoothukudi to Ettayapuram main road, near north of Kurukkuchalai.

3. It is the case of the claimant before the Tribunal that on the date of accident, when she was travelling as a passenger in the Ambulance bearing Registration No.TN 09F - 5757, along with her relatives, from Tirupur to Mulakkarai, the driver of the Ambulance drove the vehicle in a high speed without control, in a rash and negligent manner and dashed against the lorry bearing Registration No.TN 28 AC 1315, which was standing on the same road without any signal or indicator and caused the accident. In the said accident, the injured sustained grievous injuries.

4. The claimant filed an application in M.C.O.P.No.187 of 2011, on the file of the Motor Accident Claims Tribunal-cum-Additional District Judge, (Fast Track Court No-II), Thoothukudi. seeking compensation.

5. Before the Tribunal, the petitioner/claimant examined six witnesses as P.W.1 to P.W.6 and marked twenty nine documents as Ex.P.1 and Ex.P.29. On the side of the respondents/Insurance Companies, three witnesses were examined as R.W.1 to R.W.3 and fourteen documents were marked as Ex.R1 to R14.

6.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 driver of the ambulance and therefore, directed the appellant/Insurance Company to pay the compensation and gave liberty to the appellant to recover the same from the owner of the vehicle/2nd respondent herein.

7.Against which, the appellant/Insurance Company has filed this present appeal challenging the liability.

8. When the matter came up for hearing today, the learned counsel appearing for the appellant/Insurance Company would fairly submit that the award of the lower Court may be confirmed, 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."

9. Heard the submissions and perused the materials available on record.

10. 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". Therefore, the Tribunal has rightly directed the appellant to pay compensation at the first instance and then, recover the same from the second respondent. There is no error in the said finding. Therefore, I have no reason to interfere with the finding of the Tribunal.

11.In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 30.03.2012 made in M.C.O.P.No.187 of 2011 passed by the Motor Accident Claims Tribunal-cum-Additional District Judge, (Fast Track Court No-II), Thoothukudi, is hereby confirmed. The appellant/Oriental Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of six weeks from the date of receipt of a copy of this judgment, if not already deposited and in the later stage, the appellant/Insurance Company is entitled to recover the same from the owner of the vehicle/second 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 such deposit being made, the Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalised Banks, in a Fixed Deposit scheme, till she attains majority. The guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To:

1. The Additional District Judge
   Motor Accident Claims Tribunal cum
   (Fast Track Court No-II),
   Thoothukudi.

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

+ 1 CC TO Mr.K.BHASKARAN, ADVOCATE IN SR No. 75809

PM
TE/JC/SAR-I : 12/10/2017 : 4P/4C

C.M.A(MD)No.16 of 2013 and
M.P.(MD)No.1 of 2013
31.08.2017