IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No. 760 of 2015 and M.P.No.1 of 2015

The Divisional Manager,
Oriental Insurance Company Ltd.,
Vellore. .. Appellant/2nd Respondent

Vs.

1.Prabhu

2.The proprietor
M/s Dharma Service Station,
Chinna Kalapet, Pondicherry.

3. Srinivasan

4. The Divisional Manager,
ICICI Lambord General Insurance Co. LTd,
Vellore. .. Respondents /Petitioners/ Respondents 1,3 & 4

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgment and decree in M.C.O.P.No. 111 of 2010 dated 19.06.2014 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Cheyyar.

For Appellant :Mr.N.Vijaya Raghavan

For Respondent-1 :No appearance
For Respondent - 2 :Mr.D.S. Thiruvavalavan
For Respondent - 3 : No appearance
For Respondent - 4 : Mrs. R. Sreevidya

JUDGMENT

The Insurance company has come forward with the above appeal against the Judgment and decree dated 19.06.2014 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Cheyyar, passed in M.C.O.P.No.111 of 2010.

2. The accident took place on 16.05.2007 at about 9:45 hours while the first respondent and his wife were going on their motor cycle bearing Regn.No.01.B.4269, from Arni to Chetpet. At that time, the 3rd respondent vehicle bearing Regn.No.TN.21.M.9733, got punctured near Periya Kozhapalur Junction Road and the driver parked the lorry and get down from the lorry to repair the puncture. The second respondent/Dharma Service Station, vehicle Tanker Lorry bearing Reg.No.PY.01.J.9315 came on the road and dashed on rear side of the Lorry, as a result, first respondent/Prabhu sustained injuries hence, he filed the claim petition before the Tribunal claiming seeking compensation for Rs.15,00,000/-.The Claims Tribunal, on a consideration of oral and documentary evidence, has awarded a sum of Rs.4,40,000/- payable with interest at the rate of 7.5% per annum and fixed the liability on the appellant herein to pay the compensation, as he is the insurer of the second respondent vehicle.

3. The Tribunal, considering the materials on record awarded a sum of Rs.4,40,000/- as compensation and the Tribunal held that the 1st and 2nd respondents therein are liable to pay the compensation.

4. The contention of the learned counsel for the Insurance company is that the vehicle permit belongs to 3rd respondent, which caused the accident . The accident occurred on 16.05.2007, but the vehicle permit was surrendered on 20.04.2006 and the Fitness certificate of the said lorry had expired on 17.08.2006, hence there is a violation of terms and conditions of the policy and therefore, the Insurance company is not liable to pay the the compensation awarded by the Tribunal.

5. On the other hand, the learned counsel for the claimants/ respondents 1 and 2 herein has invited the attention of this Court to the non-abstante clause contained in Section 147(5) and also Sections 149(4) (5) of the Motor Vehicles Act, 1988, which read thus:

> "147 . Requirements of policies and limits of liability:
>
> (5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under the section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."
>
> 149. Duty of insurers to satisfy judgments and

awards against persons insured in respect of third party risks:-

(4) where a certificate of insurance has been issued under Sub-section (3) of section 147 to the person by whom a policy has been affected, so much of the policy as purports to restrict the insurance of the persons insured thereby reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of Sub-section (1) of Section 147, be of no effect...

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) if the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would from the provisions of the section be liable under the policy in respect of that liability the insurer shall be entitled to recover the excess from that person."

6. Relying on the above provisions, the learned counsel contended that it is the duty of the Insurance company to pay compensation to the insured vehicle even in respect of 3rd party and thereafter, to recover the same from the owner of the vehicle, if there is any violation of policy conditions. He also relied upon the following decisions of this Court to the above effect:

(i) 2013 (2) TNMAC 515 (The Manager, united India Insurance Co Ltd Vs. Balakrishnan and others), wherein at paragraph No.8 it has been observed thus:

B .Moreover, we are of the opinion that the evidence on record would show that the Fitness Certificate had expired just one month prior to the date of occurrence and the same could be renewed at any time. In this situation, we are of the opinion that since the vehicle was covered by insurance on the date of accident, the Insurance company cannot deny the payment of compensation in respect of the claim made by the third parties. So far as the thirty party claims are concerned, the Insurance company can pay the compensation amount and recover the same from the owner of the vehicle. In view of the above discussions, we are of the view that since on the date of accident there is no fitness certificate, the Insurance Company can pay the compensation and recover the same from the owner of the vehicle."

(ii) 2014 (2) TNMAC 201 (Divisional Manager, New India Assurance Co. Ltd. V. Periyappa (Died) wherein the relevant paragraph reads thus:

5. The question as to whether, it is open to the Insurer to seek for total exoneration for payment of compensation to a third party victim or whether it has only a right of recovery under Section 149(4) & (5) of the Motor Vehicles Act, has been extensively considered in ICICI Lombard General Insurance Co. V. Annakkilli, 2012 (1) TNMAC 226, wherein, this Court following the principles of law laid down by the Apex Court and Hon'ble Division Bench Judgment is held that payments of compensation to a third party victim of legal representatives of the deceased, as the case may be, is statutory and considering the interpretation given by the Supreme Court to Sections 147, 149(a) & 5 vis-a-vis, the defence open to the Insurance Company under Section 149 (2) (1)(ii) of the Motor Vehicles Act held that the very production of the words, " pay compensation to the third party and recover the same from the insurer in Section 149(2) & (5) of the Act, would reflect the divine intention of the legislature to protect the interest of the Third parties. vis-a-vis inter-se disputes between the insured and insurer, and further held that the Insurer cannot avoid its liability to pay compensation to a third party , but such avoidance can be made only, if willful breach or terms and conditions of the policy by the insured, by conscious and recklessly allowing the Driver, who die not posses a valid and effective driving license to drive the vehicle and even if such breach is proved, payment or compensation to the 3rd party victim cannot, at a stretch of imagination, be avoided by the company and that is the only remedy open to the Insurer in law is to pay the compensation to the 3rd Insurer in law is to pay the compensation to the third party victims and recover from the insured. In view of the above, the insurer cannot be totally exonerated from payment of compensation to third

party, but it can avoid its liability only to the insured.

7. In view of the non-abstante clause mentioned supra and other relevant provisions of the Motor Vehicles Act, 1988 and in view of the decisions of this Court referred to above, this Court is unable to accept the contention of the Insurance Company that the Tribunal was wrong in awarding compensation. As the Tribunal was right in awarding reasonable compensation, the Insurance company will have to pay the compensation to the claimants and they can recover the same from the owner of the vehicle under Pay and recovery method.

8. In the result,

(a) this Civil Miscellaneous appeal is dismissed.

(b) the appellant/Insurance company is directed to pay the entire award amount with interest at the rate of 7.5% per annum and recover the amount from the owner of the vehicle/second respondent herein.

(c) the appellant is directed to deposit the entire award amount with 7.5% interest within a period of 8 weeks from the date of receipt of copy of this Judgment.

(d) On such deposit being made, it is open to the claimant to make necessary application to withdraw the same.

(e) No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Subordinate Court, Cheyyar.

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.72706
+1cc to Mr.K.G.Senthilkumar, Advocate Sr.71897

C.M.A.No.760 of 2015
and M.P.No. 1 of 2015

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srg 01/03/2019