BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.07.2018
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1080 of 2013
and
M.P(MD)No.3 of 2013

The Divisional Manager,
National Insurance Company Ltd.,
K.R.T. Building, Cantonment,
Trichy – 620 001. ... Appellant/2nd Respondent

Vs.

1.E.Savuriammal
2.E.Arockiarani
3.E.Arulraj
4.E.James ... Respondent 1 to 4/ Petitioner
5.A.D.Jegannathan ... 5th Respondent / 1st Respondent

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in M.C.O.P.No.388 of 2010, dated 14.02.2012 on the file of Motor Accident Claims Tribunal (Sub Court), Kulithalai.

For Appellant : Mr.J.S.Murali
For R.1 to R.4 : Mr.N.Sudhagar Nagaraj
For R.5 : No Appearance

JUDGMENT

This civil miscellaneous appeal is directed against the judgment and decree passed by the Motor Accident Claims Tribunal, (Sub Court), Kulithalai, in M.C.O.P.No.388 of 2010, dated 14.02.2012.

2. Heard the learned Counsel appearing for the respective parties and perused the records carefully.

3. It is a case of fatal and the Tribunal has awarded a sum of Rs.6,79,000/- as compensation. The manner of accident as well as the quantum is not disputed and the appellant/ Insurance Company has preferred this appeal only on the ground of liability.

4. According to the appellant/Insurance Company, there is violation of policy norms, as the driver of the offending vehicle

was not in possession of a valid driving licence at the time of accident. Moreover, there is no fitness certificate for the offending vehicle to ply on the road and therefore, they are not liable to pay compensation. However, the Tribunal has directed the appellant/Insurance Company to pay the compensation, stating that no evidence was let in to show that there is a violation of policy conditions.

5. The learned Counsel for the appellant/Insurance Company relied on the latest verdict of the Hon'ble Supreme Court, reported in ***2018 SAR (Civil) 410,*** in the case of ***Pappu and others v. Vinod Kumar Lamba and another,*** and would submit that the onus is on the owner of the vehicle / the fifth respondent herein, to prove that the driver possess valid driving licence at the time of accident. Therefore, he prays for interference of this Court.

6. This Court has perused the said judgment and applied its mind. In the said judgment, the Hon'ble Supreme Court has held as follows:-

> *"... Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1/owner to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle - The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence - without disclosing the name of the driver in the written statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability - The Insurance Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle."*

7. As per the aforesaid judgment, it is for the owner of the vehicle, the fifth respondent herein, to plead and prove the foundational facts before the Tribunal. But, he remained *ex-parte* both before the Tribunal as well as before this Court. Even if the claim of the appellant/Insurance Company that the vehicle was driven by an unlicensed person is proved, i.e., there is a violation of policy condition and that it is the owner, who is liable to pay the compensation, this Court is of the view that ends of justice would be met, if pay and recovery is ordered.

8. In this connection, this Court feels it apt to mention the judgment in the case of ***ORIENTAL Insurance Company LIMITED V. NANJAPPAN AND OTHERS*** reported in ***2004(2) CTC 464,*** wherein, the mode of recovery has clearly been 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. In the light of the authoritative pronouncement of the judgments cited supra, pay and recovery is ordered in the case on hand. The appellant / Insurance Company is directed to deposit the entire award amount with accrued interest @ 7.5% from the date of petition till the date of deposit and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any, and on such deposit the claimants are permitted to withdraw the deposited amount, as apportioned by the Tribunal, with accrued interests and costs, without filing any formal petition before the Tribunal. The appellant / Insurance Company is at liberty to recover the amount from the fifth respondent as per the decision of the Hon'ble Supreme Court in ***Nanjappan Vs. Oriental Insurance Company Limited***

and Others.

10. This Civil Miscellaneous Appeal is partly allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To
1. The Subordinate Judge,
   Motor Accident Claims Tribunal,
   Kulithalai.

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

+1cc to Mr.J.S.Murali, Advocate SR.No.72698
Gk
MK/SKN/SAR 4/09.08.2018/4P/5C

C.M.A(MD)No.1080 of 2013
and
M.P(MD)No.3 of 2013
12.07.2018