BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.06.2018
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.442 of 2013
and
M.P(MD)No.1 of 2013

The Branch Manager,
The New India Assurance Company Limited,
Door No.480, Sekkalai Road,
Karaikudi Town,
Karaikudi Taluk,
Sivagangai District. ... Appellant/3rd Respondent

vs.

1)Mani(Died) ... 1st respondent/petitioner
2)Karuppusamy
3)Periyakaruppan
4)Dr.Kumutha
5)Kannan ... respondents 2 to 5/ respondents 1, 2,4 and 5
6)Thangam ... 6th respondent

(R6 impleaded vide order dated 18.06.2018 made in CMP.10062 to 10064/2017)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 03.07.2012 made in M.C.O.P.No.40 of 2008 on the file of Motor Accidents Claims Tribunal, Sub Judge, Devakottai.

For Appellant	:	Mr.K.Murugesan
For R2, R4 & R5	:	No appearance
R3	:	Died
R6	:	Mr.S.Manikandan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 03.07.2012 made in M.C.O.P.No.40 of 2008 on the file of Motor Accidents Claims Tribunal, Sub Judge, Devakottai.

2.In an accident which occurred on 12.06.2006, the 1st respondent/claimant sustained fracture of right leg, for which, he filed M.C.O.P.No.40 of 2008 on the file of Motor Accidents Claims Tribunal, Sub Judge, Devakottai, and the Tribunal after considering the oral and documentary evidence on either side, held that the 2nd respondent/driver of the bus belonged to the 3rd respondent insured with the appellant was responsible for the accident and awarded compensation of Rs.2,22,620/- with interest at 6% per annum. However, considering the fact that the driver of the bus did not possess valid driving licence at the time of accident and therefore, there was violation of policy conditions, the Tribunal directed the appellant insurance company to pay compensation and thereafter recover the same from the owner of the vehicle. Aggrieved by the same, the present appeal has been filed.

3.Though the appellant has raised many grounds in the memorandum of appeal, learned counsel for the appellant restricted his submission only to the aspect of liability fastened on the appellant, by stating that at the time of accident, the driver of the bus did not possess a valid driving licence which is a violation of policy condition and therefore, the appellant insurance company ought to have been exonerated from its liability to pay compensation instead of ordering pay and recovery by the Tribunal.

4.This Court is not inclined to accept the said contention of the learned counsel for the appellant for the reason that though it was pleaded by the appellant that at the time of accident, the driver of the offending vehicle did not possess a valid driving licence, when a suggestion was put to the witness let in on the side of the appellant that before the expiry of the driving licence, whether there was any possibility of renewing the driving licence, there was no answer to the same and based on which, the Tribunal ordered pay and recovery.

5.It is well settled that payment of compensation to a third party victim or legal representatives of the deceased, as the case may be, is statutory in nature and that there cannot be total exoneration. The very introduction of the words, "pay compensation to the third party and recover the same from the insured" in Section 149(4) and (5) of the Motor Vehicles 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. The only remedy open to the insurer in law is to pay the compensation to the third party victims and recover from the insured. Hence, the insurer cannot be totally exonerated from payment of compensation to third party, but it can avoid its liability only to the insured.

6.In my considered opinion, there is no infirmity in the impugned order passed by the Tribunal. The appellant shall pay compensation to the claimants at the first instance and thereafter recover the same from the owner of the vehicle as per the following mode of recovery incorporated in the judgment of the Hon'ble Supreme Court in ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others,*** reported in ***I (2004) ACC 524 (SC)***:-

> ''*(7) ....For the purpose of recovering the compensation amount 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 insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. 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 realisation by disposal of the securities to be furnished or from any other property of the insured. ....*''

7.Hence, the appellant is directed to deposit the entire award amount with interest as awarded by the Tribunal within a period of four weeks from the date of receipt of the copy of this judgment, if not already deposited. On such deposit, the 6th respondent is permitted to withdraw the same by making necessary application before the Tribunal.

Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Sub Judge,
Motor Accidents Claims Tribunal,
Devakottai.

Copy to:

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

+1cc to S.Manikandan, Advocate SR.No.68588

Bala
MK/KAK/SAR 1/14.08.2018/4P/5C

CMA(MD)No.442 of 2013
18.06.2018