BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **17.10.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CMA(MD)No.1510 of 2010

1. Karuppaiah
2. Thavamani
3. Selvam ... Appellants

versus

1. Babu
2. The Branch Manager,
   United India Insurance Company Ltd.,
   GST Road, Guindy,
   Chennai. ... Respondents

Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 18.03.2010 in M.C.O.P.No.243 of 2008 on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Court (Special Court), Pudukkottai.

For Appellants : M/s.K.Baalasundaram

For R2 : Mr.B.Rajesh Saravanan

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the Judgment and Decree dated 18.03.2010 in M.C.O.P.No.243 of 2008 on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Court (Special Court), Pudukkottai.

2. Brief facts of the case are as follows:

(i) On 25.05.2007, one Ravichandran was walking on the left side of the road towards the north of backside of a Siva Temple on Keeramangalam-Aranthanki Road after attending condolence of his relative. At that time, a TATA SUMO bearing Reg.No.TN20 7871, belonging to the first respondent before the Tribunal and insured with second respondent Insurance Company, was driven by its driver in a rash and negligent manner and dashed against him, due to which, he sustained fatal injuries. Hence, the legal heirs of the deceased filed a claim petition in M.C.O.P.No.243 of 2008 on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Court (Special Court), Pudukkottai, claiming compensation of Rs.15,00,000/-.

(ii) The Tribunal, after considering the oral and documentary evidence, had held that the accident had occurred due to the rash and negligent driving of the driver of the vehicle, who does not have any valid driving licence and hence, the Insurance Company is exonerated from its liability and directed the owner of vehicle to pay the compensation of Rs.3,27,000/- to the claimants.

(iii) Challenging the liability fastened on the owner of the vehicle, the present Civil Miscellaneous Appeal has been filed by the claimants.

2. The challenge in the present Civil Miscellaneous Appeal is only with respect to the liability fastened as against the owner of the vehicle by the Tribunal.

3. It is the contention of the appellants that the Tribunal has found that the accident had occurred due to the negligent on the part of the driver of the offending vehicle, who drove the vehicle, without having any valid licence and therefore, the Tribunal has come to the conclusion that it is a violation of policy condition and hence, the Insurance Company is not liable to pay compensation and dismissed the claim petition as against the Insurance Company and fixed the entire liability on the owner of the vehicle and directed the owner of the vehicle to pay the entire award to the claimant.

4. It is also contended by the learned counsel appearing for the appellants that the vehicle was properly insured with the Insurance Company and when there is a violation of policy condition, the Tribunal ought to have ordered pay and recovery of the compensation amount and ought not to have exonerated the Insurance Company fully from paying the compensation amount. It is settled proposition of law that when there is any violation of policy condition, the Court can order pay and recovery. But, in the present case, without applying the said settled proposition of law laid down by the Apex Court as well as by the Division Bench of this Court, the Tribunal has passed an order, fastening the liability against the owner of vehicle alone, which is totally against the settled proposition of law.

5. In this regard, the learned counsel appearing for the appellants relied upon two judgments, which are as follows:

(i) 2004 (1) TN MAC (SC) 211 (Oriental Insurance Co. Ltd. vs. Shri Najappan and others)

(ii) 2009 (1) CTC 1 (Branch Manager, United India Insurance Co. Ltd., Branch Office, Nethaji Bye Pass Road, Dharmapuri Town vs. Nagammal and 2 others)

6. On the other hand, the learned counsel appearing for the second respondent contended that it is admitted fact that the

driver, who drove the offending vehicle, was not having valid driving licence at the time of accident. Hence, the Tribunal has rightly fixed the liability on the owner of vehicle and therefore, there is no need for interference and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellants as well as the second respondent.

8. Admittedly, in the present case, the offending vehicle was insured with the Insurance Company. However, the only issue was that the driver of the offending vehicle did not have any valid driving licence at the time of accident. This is no doubt a violation of policy condition. The owner of the vehicle should not have allowed the driver to ride the vehicle without licence.

9. In the decision rendered in (**National Insurance Co Ltd., vs. Swaran Singh and others) Accidents Claims Journal 2004 Volume I, page No.1** the Honourable Supreme Court held that even if there is any policy violation, the insurance company cannot be absolved from their liability to pay the compensation amount.

10. Following the ratio laid down by the Hon'ble Apex Court, the Tribunal should have ordered pay and recovery, i.e. insurance company shall pay the amount and thereafter recover it from the owner of the vehicle. Therefore, this Court is inclined to direct the Insurance Company to pay the compensation amount to the claimants and recover the same from the owner of the vehicle.

11. To that extent, the award passed by the Tribunal is modified as follows:

> “The Insurance Company shall pay the entire award of Rs.3,27,000/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this Judgment, and thereafter, the Insurance Company is permitted to recover the entire award amount along with interest from the owner of the vehicle bearing registration No.TN 20 7871.”

12. Accordingly, the Civil Miscellaneous Appeal is allowed by modifying the Judgment and Decree dated 18.03.2010 in M.C.O.P.No.243 of 2008 on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Court (Special Court), Pudukkottai. The Insurance Company is directed to pay the entire award of Rs.3,27,000/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the respective share of the claimants (as per the apportionment made in

M.C.O.P.No.243 of 2008) to their Bank Account directly through RTGS, within a period of three weeks thereafter. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To
The Motor Accident Claims Tribunal
cum Additional District and Sessions Court
(Special Court), Pudukkottai.

+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-92543[F] dated 17/10/2019)

+1 CC to M/s.B.RAJESH SARVANAN, Advocate (SR-92952[F] dated 18/10/2019)

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