BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.960 of 2018
and
CMP(MD)Nos.10297 of 2018 and 4013 of 2019

Shriram General Insurance Co.Ltd.,
Jaipur Rajasthan. ... Appellant/Respondent 2

vs.

1)Santha
2)Minor Nanthini Saraswathi
3)Minor Saranraj ...Respondent 1 to 3/Claimants

(Minor respondents 2 and 3 are represented by next friend and mother 1st respondent)

4)V.Nataraj ... Respondent/Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 16.10.2015 made in MCOP.No.165 of 2011 on the file of the Motor Accidents Claims Tribunal (Sub Court), Kulithalai.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 to R3 : Mr.S.Deenadhayalan

JUDGMENT

This appeal is filed against the fair and decreetal order dated 16.10.2015 made in MCOP.No.165 of 2011 on the file of the Motor Accidents Claims Tribunal (Sub Court), Kulithalai.

2.The only contention made by the learned counsel for the appellant is that the accident had occurred while the deceased had travelled in the goods vehicle after unloading the goods and therefore, he was an unauthorised passenger which is a violation of policy conditions. Thus, the appellant is not liable to pay the compensation.

3.Learned counsel for the respondents 1 to 3/claimants produced the judgment of the Hon'ble Supreme Court in **2018 (1) TN MAC 435 (SC), Shivawwa and another vs. Branch Manager, National India Insurance Co.Ltd., and another** and submitted that as per the said judgment, the deceased is deemed to be a loadman and the Tribunal considering the said aspect in proper perspective, has rightly ordered pay and recovery which does not require any interference by this Court.

4.Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3.

5.It is relevant to extract below paragraphs 9 to 12 of the judgment reported in 2018 (1) TN MAC 435 (SC):-

''9.As mentioned earlier, the High Court by a sweeping observation proceeded to reverse the finding of fact recorded by the Tribunal. Whereas, the Tribunal had duly considered the evidence of PW-1, PW-2 and the material accompanying the charge-sheet filed in respect of Crime No.12/2001 as also the plea taken by the insurer and the evidence of RW-1. In our opinion, the conclusion reached by the Tribunal is a possible view, which could not have been disturbed by the High Court in the appeal filed by the insurer, much less in such a casual manner, as has been done by the High Court.

10. Notably, the High Court has not even adverted to the other findings recorded by the Tribunal as regards the manner in which accident occurred and, in particular, about the rash and negligent act of the driver of the tractor which had caused the accident resulting into the death of Chanabasayya on the spot due to grievous injuries suffered by him. The High Court has also not adverted to the finding recorded by the Tribunal in respect of Issue Nos.2 and No.3 regarding the proof of age, occupation and income of the deceased and the quantum of just and reasonable compensation. The High Court based its conclusion that the insurer cannot be saddled with the liability to satisfy the award, on the finding that the deceased was not travelling along with his goods at the time of accident. No more and no less. However, as the said finding recorded by the High Court cannot be sustained, the finding of the Tribunal on the factum that the deceased had travelled along with his goods will have to be affirmed and restored. It would necessarily follow that the insurer was not absolved of its liability to pay the compensation amount awarded to the claimants. We say so because the Tribunal has found, as of fact, that the insurance policy brought on record was a valid policy in respect of the offending tractor for the period commencing from 12.02.2000 to 11.02.2001.

11. Assuming for the sake of argument that the insurance company was not liable to pay compensation amount awarded to the claimants as the offending tractor was duly insured, the insurer would be still liable to pay the compensation amount in the first instance with liberty to recover the same from the owner of the vehicle

owner (respondent No.2), in light of the exposition in the case of National Insurance Co. Vs. Swarn Singh and Ors. 1 In paragraph 110 of the said decision, a three-Judge Bench of this Court observed thus:

110. The summary of our findings to the various issues as raised in these petitions are as follows:-

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by (2004) 3 SCC 297 compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) xxx

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v) xxx

(vi) xxx

(vii) xxx

(viii) xxx

(ix) xxx

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub- section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims. (emphasis supplied)

12. However, in the facts of the present case, we have no hesitation in taking a view that consequent to affirmation and restoration of the finding of fact recorded by the Tribunal regarding the factum of deceased had travelled along with his goods at the time of accident, the insurer would be obliged to satisfy the compensation amount awarded to the claimants.''

6.There is no dispute that the deceased was a loadman at the time of accident and after unloading the goods while returning, the accident had occurred. As per the above judgment, the deceased is deemed to have travelled as loadman at the time of accident and therefore considering the fact that the insurance policy was in force at the relevant point of time, the Tribunal has ordered pay and recovery. In my considered opinion, the said finding of the Tribunal does not require interference at the hands of this Court.

7.The appellant at the first instance is directed to deposit the entire award amount with interest and costs as awarded by the Tribunal, less the amount already deposited, if any, to the credit of the claim petition within a period of six weeks from the date of receipt of a copy of this judgment and thereafter is at liberty to recover the same from the 4th respondent/owner of the vehicle as per the 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. ....''

8.On such deposit, the 1st respondent/claimant is permitted to withdraw her share with accrued interest without filing formal permission petition before the Tribunal. The respondents 2 and 3/minor claimants were aged 15 and 13 years respectively while the claim petition was filed in 2011 and now they would have attained majority. Therefore, the respondents 2 and 3 are also permitted to withdraw their respective shares with interest by making necessary application before the Tribunal discharging their guardianship.

With the above direction, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To
1)The Sub Judge,
Motor Accidents Claims Tribunal,
Kulithalai.

2)The Section Officer,-2 copies
V.R. Section
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-72545[F] dated 01/07/2019)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-72607[F] dated 02/07/2019)

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