IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2020

CORAM:

THE HONOURALE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1359 of 2016

and

C.M.P.No.10464 of 2016

M/s.Reliance General Insurance Company Ltd.,
Motor 3rd Party Claim Office,
Anna Salai, Chennai-600 018. .. Appellant/2nd Respondent

/versus/

1.R.Kalaiyarasi

2.Minor. Murugan

3.Minor. Indirani

4.Minor. Usha

5.Gopal

6.Sundarammal

7.M.Kumaresan .. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 21.07.2015 made in M.C.O.P.No.31 of 2010 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Chengalpet.

For Appellant : Mr.Navaneethan Krishnan
for Mr.S.Arunkumar

For Respondents : No appearance

J U D G M E N T

(This case has been heard through Video Conference)

This appeal is preferred by the Insurance Company on the short point that when the Tribunal has held that at the time of the accident, the offending vehicle had no fitness certificate, the Tribunal should have ordered pay and recovery. Inspite of relying upon the Full Bench judgment of the High Court of Kerala reported in 2015(1)TNMAC 740 (FB) (Ker.)(Augustine V.M. v. Ayyapppankutty and others), the Tribunal has failed to permit the insurer to recover the award amount from the insured after satisfying.

2.It is the case where the deceased Rajini was returning from Thirukachur Housing Board quarters, a lorry bearing Reg.No.TN-25-J-7277 hit him causing grevious injury all over the body. He was taken to Chengalpet Medical College Hospital for treatment and shifted to General Hospital, Chennai. However, he succumbed to injury on 26.12.2009. A claim petition for Rs.12,55,000/- was laid by his wife, minor children and parents.

3.The Insurance Company in their counter has specifically took a plea that the offending vehicle which was insured under them has breached the permit condition and traffic rules as per the Motor Vehicles Act and Rules.

4.In the trial, four exhibits were marked on either side in which, Ex.R2 Certificate of registration clearly indicates that the fitness certificate of the vehicle got expired on 09.10.2009 and not further extended. Whereas the accident took place on 24.12.2009. The tribunal has discussed about this exhibit and plea and admitted that at the time of accident, the offending vehicle had no fitness certificate. In such circumstances, the Tribunal ought to have directed the Insurance Company to pay the award amount to the claimants and permitted to recover the same from the vehicle owner/insured. The award is conspicuously silent about the right of recovery. Having held that the insured had breach the permit condition, the Tribunal should have permitted the insurer to recover the same from the insured. Therefore, this Civil Miscellaneous Appeal is partly allowed to the effect that the Insurance Company is permitted to recover the award amount from the insured/owner of the vehicle, as per the judgment of the Hon'ble Supreme Court in Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in (2004) ACC 524 (SC).

5.Therefore, it is held that the Insurance Company, though exonerated, is directed to pay and recover the same from the owner of the vehicle. However, the insurance company is entitled to recover the compensation, as per the mode incorporated in paragraph 7 of Shri Nanjappan's case, which is incorporated as follows:-

> " 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 as if 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".

6. In the result, this Civil Miscellaneous Appeal is disposed of with the above direction. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Chief Judicial Magistrate Court,
Motor Accident Claims Tribunal,
Chengalpet.

Copy to: The Section Officer,
V.R. Section,
High Court, Madras.

C.M.A.No.1359 of 2016
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VG-II(CO)
CSR 21.04.2021