IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.439 of 2017
and C.M.P.No.2964 of 2017

National Insurance Co.Ltd.,
Branch Office
No.78, T.V.S.Street
Erode-1. ... Appellant/3rd Respondent

Vs

1.Thenmozhi
(R1 declared as major vide order of this Court dated 14.08.2018 made in C.M.P.No.14105 of 2018 in C.M.A.No. 439 of 2017). ...1st Respondent/Petitioner

2.Sivakumar

3.Vadivel

(Respondents 2 and 3 were set exparte by the Court below and hence notice against them in the above appeal may be dispensed with).
...Respondents 2 & 3/Respondents 1 & 2

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 08.11.2012 made in MCOP No.273 of 2006 on the file of the Motor Accidents Claims Tribunal (I Additional Subordinate Judge), Erode.

For Appellant : Mr.K.Padmanabhan

For Respondents: Mr.Kaithamalai Kumaran for R1
Respondents 2 & 3 Exparte before the Tribunal

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award of a sum of Rs.1,80,000/- towards compensation to the first respondent due to the injuries sustained by her in a motor vehicle accident.

2.The case in brief, is as follows:

On 30.08.2005, at about 08.40 a.m., the first respondent herein was waiting for the bus at Perundurai - Kunnathur Road, Sullipalayam Pirivu, to go to school. At that time, the motorcycle bearing Reg.No.TN-33-AX-3881, belonging to the third respondent herein and insured with the appellant Insurance Company, came in a rash and negligent manner and dashed against the first respondent. Due to the said impact, the first respondent herein sustained fractures and grievous injuries all over the body. The first respondent filed a claim petition before the Tribunal claiming a sum of Rs.2,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,80,000/- with interest at the rate of 7.5% per annum from the date of petition. While awarding compensation, the Tribunal has directed the appellant Insurance Company to pay compensation to the claimant and thereafter recover the same from the owner of the vehicle, on the ground of violation of policy conditions.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. But he submitted that the Tribunal went wrong in making the appellant liable to pay the compensation and recover the same from the owner of the vehicle, when the fact remained that the driver, the second respondent herein, was charged for driving the motorcycle without driving license on the date of accident and he voluntarily admitted the offence as seen from Ex.P5-Charge sheet and Ex.P6-Judgment of the Judicial Magistrate Court, Perundurai in C.C.No.488 of 2005, and further Ex.P4-Accident Inspection Report also revealed that the driver was not possessing the driving license on the date of accident. He further submitted that invoking the principles of pay and recovery could be made only in the case of fake driving license confirmed on verification by the licensing authority and not in the case of no driving license.

5.This Court has also heard the submissions of the learned counsel for the first respondent/claimant, on the submissions made by the learned counsel for the appellant, and perused the records carefully.

6.Since the quantum of compensation awarded by the Tribunal is not disputed, this Court is not inclined to interfere with the same.

7.With regard to the contentions put forth on the side of the Insurance Company that the driver was not possessing the driving license on the date of accident and hence the Insurance Company is not liable to pay any compensation and that the Tribunal has erred in ordering pay and recovery, the Tribunal, taking note of the decision of the Hon'ble Supreme Court in 2011 (1) TN MAC 334 (SC) in the case of Kusum Lata v. Satbir and the decisions of this Court reported in 2012(1) TN MAC 748 (Cholamandalam General Insurance Co.Ltd. v. K.Anbazhagan) and 2012(1) TN MAC 762 (United India Insurance Co.Ltd. v. K.Rajendran), relied upon by the counsel for the claimant before the Tribunal, held that it is correct to order pay and recovery in the case of breach of policy conditions. The Tribunal has also held that merely on technical grounds, the Insurance Company cannot say that it is not liable as far as the third party risk is concerned, as the policy of the vehicle was in force on the date of accident. Observing so, the Tribunal directed the Insurance Company to pay the compensation and thereafter recover the same from the owner of the vehicle.

8.In Kusum Lata's case, the Hon'ble Supreme Court has ordered pay and recovery following its earlier decision rendered by a Three-Judge Bench in the case of National Insurance Co.Ltd. v. Swaran Singh, reported in 2004(1) TN MAC 104 (SC), by stating that in respect of dispute about license, the Insurance Company has to pay and then recover the amount from the owner of the vehicle. In 2012(1) TN MAC 748 (supra), a learned single Judge of this Court has held that the Tribunal directing the insurer to pay compensation to third party claimant and recover the same from owner, is correct in view of scheme of compulsory insurance under the Act in respect of third party claimant. In 2012(1) TN MAC 762 (supra), it has been held that Motor Vehicles Act envisaged compulsory insurance in respect of third parties; that the primary liability to compensate third parties is on owner / insured and the insurer indemnifies him by paying the same and that the Tribunal fixing primary liability on insurer is not correct. Observing so, the insurer was directed to pay the compensation and thereafter recover the same from owner/insured, in that case.

9.Taking note of the principles enunciated in the above judgments, the Tribunal in the case on hand, directed the Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner of the vehicle. This Court is of the considered view that the Tribunal has correctly directed the appellant Insurance Company to pay compensation to the claimant and thereafter recover the same from the owner of the vehicle, on a proper analysis of the case laws and the facts and circumstances of the case.

10.In view of the above stated circumstances, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal. Thereafter, the appellant-Insurance Company shall proceed against the owner of the vehicle, the third respondent herein, for recovery of the compensation amount, as ordered by the Tribunal.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KM

To

1.The I Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.

Copy to:

The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.29291

C.M.A.No.439 of 2017
and C.M.P.No.2964 of 2017

SJ(CO)
CB(21/04/2021)