BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:17.04.2021
CORAM
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
C.M.A(MD) No.947 of 2010

1.T.S.Rengachari
2.R.Soundaravalli
3.R.Lakshmi .. Appellants/Claimants

vs.

1.D.Sakthi

2.The Divisional Manager,
New India Insurance Company Ltd.,
147, Salai Street, Kalaignar Maligai,
Ramanathapuram. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the fair and decreetal order dated 23.02.2010 made in M.C.O.P.No.69 of 2006 on the file of the Motor Accident Claims Tribunal (Sub-Court), Paramakudi.

For Appellants : No Appearance
For R-1 : Mr.T.Lajapathi Roy
For R-2 : Mr.J.S.Murali

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the claimants challenging the award dated 23.02.2010 made in M.C.O.P.No.69 of 2006 passed by the Motor Accident Claims Tribunal(Sub-Court), Paramakudi,

2. The parents and sister of the deceased Rajan filed the claim petition claiming compensation of Rs.5,00,000/-. It is averred in the claim petition that the deceased Rajan was doing vegetable business at Paramakudi. He used to purchase vegetables from Madurai Central Market and transported them to Paramakudi through a lorry. It is alleged that on 10.10.2003, when he was bringing vegetables from Madurai to Paramakudi in a lorry bearing Registration No.TN 65 9333, it was driven by its Driver in a rash and negligent manner and it dashed against a Tamarind tree. In the accident, the deceased was thrown away from the lorry, sustained grievous injuries and died on the spot. Hence, the owner of the lorry as well as the Insurance Company are liable to pay the compensation.

3. It was the contention of the Insurance Company before the Tribunal that the deceased was a gratuitous passenger in a goods vehicle and it was driven by a person, who did not have valid and

effective driving licence at the time of accident. Hence, no liability can be fastened on the Insurance Company.

4. Before the Tribunal, the parties have let in oral and documentary evidence. P.W.2 - Balakrishnan deposed before the Tribunal that the offending vehicle was originally driven by the Driver Jakkaian and from Silaimaan, he permitted the Cleaner Paul Kannan to drive the vehicle and near Raja Thoppu E.B Office, the vehicle capsized due to rash driving.

5. F.I.R-Ex.P.1, Sketch-Ex.P3, Motor Vehicle Inspector's report-Ex.P4 and charge-sheet-Ex.P5, were filed to show that the vehicle was driven by Paul Kannan. Though the owner of the vehicle stated before the Tribunal that the vehicle was driven by the Jakkaian, the Tribunal disbelieved his evidence and held that the said Paul Kannan, who does not have a valid driving licence, drove the vehicle at the relevant point of time. The Tribunal having held so, directed the owner of the vehicle to pay the compensation of Rs.1,41,000/-.

6. There is no appearance on behalf of the appellants. Heard the learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.

7. It is seen from the records that the deceased breathed his last at the age of 22 years and he was doing vegetable business. As the claimants did not produce any documentary proof to establish their case that the deceased earned Rs.6,000/- per month, the Tribunal had fixed the notional income at Rs.3,000/- and after deducting 1/3rd amount for his personal expenses, awarded total compensation of Rs.1,41,000/-. The quantum awarded by the Tribunal appears to be very very reasonable and does not require interference of this Court.

8. With regard to liability, it is true that on appreciation of evidence, it was found that the vehicle was driven by a person, who did not have valid driving licence. There is nothing on record to show that the owner of the vehicle permitted the Cleaner to drive the vehicle or it was occasioned with his knowledge. Even as per the evidence of P.W.2, the Driver without the knowledge and consent of the owner, allowed the Cleaner to drive the vehicle. Therefore, the contention for the learned counsel for the second respondent that no liability can be fastened on the Insurance Company, cannot be countenanced in the facts and circumstances of the case.

9. In the light of the evidence as stated supra, the decision relied on by the learned counsel appearing for the second respondent in the case of ***Beli Ram vs. Rajinder Kumar and another*** reported in ***2020 (2) TANMAC 445*** and the principle laid down therein by the Honourable Apex Court, would not apply to the case on hand.

10. It is settled legal position that in the case of claim made by a third party, even if there is any violation of policy conditions, the Insurance Company has to satisfy the award amount to the claimant and thereafter, recover the same from the owner of the vehicle. In the present case, since the claimants are third parties, the Insurance Company is liable to pay compensation to the claimants and thereafter, recover from the owner of the vehicle.

11. In ***"Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC),*** the Honourable Supreme Court directed pay and recovery and further in paragraph No.7, has held as follows:-

> *"(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."*

12. In the result, the quantum awarded by the Tribunal is confirmed and the Insurance Company is hereby directed to pay the award amount to the claimants at the first instance and thereafter, recover the same from the first respondent/owner of the vehicle as per the mode incorporated in ***Shri Nanjappan's case*** referred to above.

13. This Civil Miscellaneous Appeal is accordingly disposed of. The second respondent/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw the award amount as per the apportionment made by the Tribunal by making necessary application before the Tribunal. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal,
(Sub-Court), Paramakudi.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2c)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-16608[F] dated 20/04/2021)

+1 CC to M/s.J.S.MURALI, Advocate (SR-16363[F] dated 19/04/2021)

C.M.A(MD) No.947 of 2010
17.04.2021

KK(26.05.2021) 4P 6C