IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM:

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.1033 of 2013 and
Cross.Obj.No.14 of 2014
and M.P.No.1 of 2013

(Through Video Conferencing)

C.M.A.No.1033 of 2013 & X'Objection No.14 of 2014

Unitd India Insurance Co., Ltd.,
No.58, Purasai High Road,
Chennai 600 007. ...Appellant/2nd Respondent & 1st Respondent in X' Objection

vs.

1.G.Esakial ...1st Respondent/Petitioner & Appellant in X' Objection

2.Nafisa Overseas
29, 1st Floor,
Uthukotton Street,
Periamedu,
Chennai-3. ...2nd Respondent/1st Respondent & 2nd Respondent in X'Objection

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act,1988, against the judgment and decree made in M.C.O.P.No.248 of 2011 dated 07.08.2012 on the file of the Motor Accidenst Claims Tribunal, (III Judge, Court of Small Causes) Chennai.

For Appellant : Mr.P.Sankaranarayanan
For R1 : No Appearance

Prayer in X'Objection: Cross-Objection filed under Order XXXXI, Rule 22 of the C.P.C., praying that the compensation awarded by the lower Court at Rs.2,22,500/- is to be enhanced to Rs.3,50,000/-.

For Cross-Objector : No Appearance
For R1 : Mr.P.Sankaranarayanan

COMMON JUDGMENT

The appeal has been preferred by the insurance company questioning the liability and the Cross-objection has been preferred by the claimant for enhancement of compensation.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.2,22,500/- as compensation together with interest at 7.5% from the date of the claim petition till the date of deposit, to the 1st claimant. They had filed a claim petition for a total compensation of Rs.3,50,000/-.

3. There is no dispute in the facts. In C.M.A.No.1033 of 2013, the appellant-Insurance Company has sought to assail the impugned Judgment and Decree on the ground that the Tribunal has ordered the appellant Insurance Company to pay and recover the amount from the 2nd respondent owner of the vehicle.

4. The Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, (2004) 13 SCC 224, has held that the Insurance Company can be directed to pay and recover the same from the owner of th vehicle where there is only a violation of terms of the policy's conditions. In paragraph Nos.7 & 8, it was observed as follows:

> 7.The view of the High Court cannot be maintained in view of what has been stated in Asha Rani case [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] and Devireddy case [(2003) 2 SCC 339 : 2003 SCC (Cri) 540] . To that extent the judgment of the High Court is unsustainable. At the same time, the observations of this Court in Baljit Kaur case [(2004) 2 SCC 1 : (2004) 1 Scale 124] also need to be noted. In para 21 of the judgment, it was observed as follows: (SCC p. 8)
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> > "21. ....The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh [(2000) 1 SCC 237 : 2000 SCC (Cri) 130] .

The said decision has been overruled only in Asha Rani [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] . We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur case [(2004) 2 SCC 1 : (2004) 1 Scale 124] that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the

> vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. 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 realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.

5. In the light of the above, the Insurance Company can be directed to pay and recover the amount from the owner of the vehicle. Since the Tribunal has permitted the Insurance Company to recover the amount from the owner of the vehicle, without initiating separate proceedings, there is no informity in the impugned Judgment and decree. Therefore, the interference of this Court is not warranted.

6. Accordingly, this Civil Miscellaneous Appeal is dismissed and the Cross Objection filed by the claimant is dimissed for non-prosecution. If the amount of compensation awarded by the Tribunal has not been deposited, the appellant Insurance Company is directed to deposit the same together with interest at 7.5% from the date of the claim petition till the date of deposit and the cost, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

7. On such deposit, the claimant is entitled to withdraw the same together with interest, by filing suitable application before the Tribunal.

8. The Insurance Company, the appellant in C.M.A.No.1033 of 2013 / 1st respondent in Cross Obj.No.14 of 2014, may proceed to recover the aforesaid amount of compensation from the 2nd respondent in both the appeals, owner of the vehicle as per the above decision of the Hon’ble Supreme Court.

9. C.M.A.No.1033 of 2013 is dismissed and Cross Obj.No.14 of 2014 is dismissed for non-prosecution. No cost. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

kkd

To:

The Motor Accident Claims Tribunal,
(III Judge, Court of Small Causes)
Chennai.

Copy To:

The Section Officer,
VR Section,
High Court.

+1cc to Mr.P.Sankaranarayanan, Advocate, S.R.No.12263

C.M.A.No.1033 of 2013
and
Cross.Obj.No.14 of 2014
and
M.P.No.1 of 2013

AJS(CO)
RN(19/04/2022)