IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.04.2022

PRONOUNCED ON : 07.06.2022

C O R A M :

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.A.NO.212 OF 2012
AND
M.P.NO.1 OF 2012

M/s.Oriental Insurance Co. Ltd.,
Rep. By its Manager,
1st Floor, Dheen Complex,
Avayampalpuram,
Mayiladuthurai Town. ... Appellant/2nd respondent

.Vs.

1. J.Devi
2. J.Vinoth Kumar

3. J.Jayakumar
(2 and 3 respondents declared as major vide Court order dated 20.06.2018 made in M.P.No.1 of 2014 in C.M.A.No.212 of 2012)

4. L.Nissar
5. Iyyappan ... Respondents/Claimants

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.18 of 2007 dated 30.08.2011 on the file of Motor Accidents claims Tribunal, Additional Subordinate Court, Mayiladuthurai.

For Appellant : Mr.Elveera Ravindran

For Respondent : Mr.A.Muthukumar
For R1 to R3

R4 – Exparte

R5 – No Appearance

JUDGMENT

This appeal is filed by the Insurance company challenging the liability fixed on the appellant raising the ground that the deceased was not covered or required to be covered under the contract of insurance under Section 147 of Motor Vehicles Act.

2. The respondents 1 to 3 are the wife and children of the deceased Jeyaraman who died in the accident and they claimed Rs.18,00,000/- as compensation in M.C.O.P.No.18 of 2007. Respondent 4 is the owner of vehicle driven by the deceased. Respondent No. 5 is the driver of the offending vehicle.

3. The factual matrix of the case is as follows:-

On 02.07.2006, when the deceased Jeyaraman was returning from his duty by riding his motor cycle bearing Reg.No.TN 02 Q 2749, belonging to the 4th respondent insured with the appellant, at 1.00 afternoon, near Thirukulam, the 5th respondent/motor cyclist who was coming in the opposite direction in a rash and negligent manner, dashed against Jeyaraman who sustained serious injuries on the head and all over body, was declared dead when taken to hospital.

4. After hearing both sides and going through the evidence adduced on both sides, the Tribunal awarded compensation of Rs.10,08,500/- along with interest at 7.5% p.a. from the date of petition till the date of deposit of compensation and directed respondent No.4 and the appellant - Insurance Company to pay 60% of the compensation. The tribunal directed that since the rider of the two-wheeler owned by the 4th respondent was not having driving licence at the time of accident, the appellant insurance company shall pay the compensation and recover the same from the 4th respondent/owner of the vehicle. The remaining 40% of the award was directed to be payable by the 5th respondent herein.

5. The said Award has been called in question by the Insurance Company in this appeal taking a specific ground that fastening liability on the Insurer is not at all sustainable and further submitted that deceased rider is not covered under the policy and therefore, the Tribunal ought to have exonerated the appellant Insurance Company from any liability.

6. The learned counsel for the appellant, by relying on the decision reported in 2004 ACJ 1790 (Mad)(DB) would submit that if at all the liability of the insurance company is considered, it can be only as “No fault liability” and the award of Rs.10,08,500/- under various heads is excessive.

7. It is settled proposition of law that when a claim is presented under the Motor Vehicles Act, the insurance company is liable to pay compensation even when the driver of the vehicle was not possessing the valid driving licence and that amount may later be recovered from the owner of the vehicle.

8. In the case of third party risks, as per the decision in National Insurance Company Ltd. v. Swaran Singh and others (2004) 3 SCC 297, the insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. Doctrine of "pay and recover" was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured.

9. So far as the recovery of the amount from the owner of the vehicle, the insurance company shall recover as held in the decision in Oriental Insurance Co. Ltd. v. Nanjappan and others (2004) 13 SCC 224.

10. To determine the loss of dependency, the Tribunal taken into consideration the age of the deceased as 40 and adopted 16 multiplier, deducted 2/3 for his personal expenses and arrived at Rs.9,38,496/- and further added Rs10,000/- towards funeral expenses, Rs.5000/- towards Transportation, for loss of love and affection to the wife and children- Rs.30,000/-, for loss of consortium- Rs.25,000/- to the wife of the deceased and all together rounded off the compensation to Rs.10,08,500/- to the claimants, which is affirmed by this court finding it as just compensation.

11. Insofar as direction of the Tribunal directing the appellant-Insurance company to pay and recover the compensation from the owner of the vehicle, is also confirmed. The appellant

insurance company shall pay the compensation as awarded by the Tribunal to the respondents 1 to 3/claimants along with the accrued interest and the insurance company shall recover the same from the owner of the vehicle.

12. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Motor Accidents claims Tribunal,
   The Additional Subordinate Court,
   Mayiladuthurai.

2. The Section Officer,
   V.R.Section,
   High Court, Madras.

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No.32441
+1cc to Mr.A.Muthukumar, Advocate, S.R.No.32973

C.M.A.NO.212 OF 2012

JPL(CO)
PBS/28/06/2022