(2015) 12 MAD CK 0009

In the Madras High Court

Case No : C.M.A.(MD)Nos.1343 and 1344 of 2015 and M.P.(MD).Nos.4 and 4 of 2015 C.M.A.(MD)No.1343 of 2015

M/s. National Insurance Co. Ltd. — APPELLANT

Vs

Lingadurai — RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Citation : (2016) 1 TNMAC 417

Hon'ble Judges : Mr. T. Mathivanan, J.

Bench : Single Bench

Advocate : Mr. P. Malini, Advocate, for the Appellant; Mr. P. Subbiah, Advocate, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

Mr. T. Mathivanan, J.—The National Insurance Company, Sankagiri, has filed these two Civil Miscellaneous Appeals under Section 173 of the Motor Vehicles Act as against the common award dated 28.01.2013 and made in the claim petitions in M.C.O.P.Nos.70 and 71 of 2010 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Valliyoor.

2. The first respondent in both the appeals are the claimants in M.C.O.P.Nos.70 and 71 of 2015 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Valliyoor. The second and third respondents herein are the respondents 1 and 2 in the claim petitions.

3. Since the issue involved in both these Civil Miscellaneous Appeals is one and the same and the parties to the claim petitions are also one and the same, these two appeals have been consolidated together, heard jointly and disposed of in this common judgment.

4. Heard Ms. P. Malini, learned counsel appearing for the appellant insurance company and Mr. P. Subbiah, learned counsel appearing for the first respondent in both appeals.

5. The first respondent in both the appeals viz., M.C.O.P.Nos. 70 and 71 of 2010 are the father and son. It is revealed from the records that on 18.06.2009 at about 09.30 p.m. the first respondent Lingadurai was travelling as a pillion rider in the TVS Suzuki Motor Cycle bearing Registration No.TN-72-V-4858 which was driven by his son Ranjith Kumar (Claimant in M.C.O.P.No.71 of 2010). When they were proceeding near Southern Petroleum Bunk on the Kalakadu-Cheranmahadevi road near the bridge, the second respondent herein had driven the Yamaha RX100 motor cycle bearing Registration No.TN-28-Y-1562 belonging to the third respondent herein from the opposite side in a hectic speed coupled with the negligence and allowed the said two wheeler to hit against the motor cycle driven by the claimant Ranjith Kumar and as a result of which both the first respondents in the appeals had sustained multiple injuries on all over their bodies. Claiming a sum of Rs.5 lakhs and Rs.6 lakhs respectively, the claimants/ first respondents in both the appeals had moved the Motor Accident Claims Tribunal (Subordinate Judge), Valliyoor with the above said claim petitions. The appellant insurance company being the third respondent in the above said claim petitions had contested the claim of the first respondents (both appeals).

6. On appreciation of evidences both oral and documentary, the claims Tribunal had proceeded to pass an award of Rs.1,44,300/- towards compensation for the injuries sustained by the claimant Lingadurai and a sum of Rs.2,30,300/- for the injuries sustained by the claimant Ranjith Kumar directing the appellant insurance company to pay the above said compensation with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and to recover the same from the second respondent thereafter.

7. It is pertinent to note here that the appellant insurance company had taken a specific stand in their counter statement that when two vehicles were involved in the accident, fixing the sole liability on the rider of the Yamaha RX100 bearing Registration No.TN-28-Y-1562 belonging to the third respondent herein was highly mischievous and unsustainable under law. The appellant insurance company had also taken a specific stand that in fact the owner of the said motor cycle bearing Registration No.TN-72-V-4858 and its insurance company were necessary parties to the proceedings and without impleading them, there could not be a proper and effective adjudication. Thirdly, the appellant insurance company had also taken a stand that the owner of the two wheelers bearing Registration No.TN-28-Y-1562 had permitted a person who was not having valid driving licence to drive the class of vehicle insured with the appellant insurance company. Therefore, the appellant has contended that the owner of the vehicle bearing Registration No.TN-28-Y-1562 alone was responsible for the breach of policy and if any award was to be passed, that could be made against the owner of the Yamaha RX100 bearing Registration No.TN-28-Y-1562 and not against the insurance company. This contention projected by the insurance company was accepted by the Tribunal. Ultimately the Tribunal, while passing the award as afore stated, had directed the appellant insurance company to pay the compensation with interest at the rate of 7.5% per annum from the date of

petition and recover the same from the third respondent who is the owner of the offending vehicle viz., Yamaha RX100 bearing Registration No.TN-28-Y-1562. Only on this sole ground ie., questioning the direction given to the appellant insurance company to pay the compensation and recover the same from the third respondent/owner of the vehicle in the later stage, these appeals have been preferred.

8. It is significant to note here that the theory of pay and recovery has been upheld by the Apex Court in the recent decision reported in (2013) 7 SCC 62 in the case of S.Iyyapan v. United India Insurance Co. Ltd., and another wherein it has been held in paragraph 17 as follows:

"17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer''s right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,

(i) the vehicle was not driven by a named person.

(ii) it was being driven by a person who was not having a duly granted licence, and

(iii) person driving the vehicle was disqualified to hold and obtain a driving licence.

Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

9. It is generally understood that if the owner of the vehicle is directed to pay the compensation to the affected persons, they may not be able to get the benefit of the award immediately. The insurance company is an affluent corporate body and can pay the amount to the claimants and recover the same from the owner of the vehicles in the later stage by way of filing execution petition without actually filing a suit for recovery of amount. Since the provisions of the Motor Vehicles Act are benevolent provisions, there is nothing wrong to direct the appellant insurance company to pay the award amount to the claimants and recover the same from the third respondent who is the owner of the vehicle in the later stage through an execution proceedings without actually filing a suit for recovery of the same.

10. Keeping view of the above fact, this Court finds that the appeals are liable to

be dismissed and accordingly both the appeals are dismissed. The award passed by the Tribunal in both the claim petitions viz., M.C.O.P.Nos.70 and 71 and 2010 are confirmed. The appellant/insurance company is directed to deposit the award amount in both the claim petition with interest at the rate of 7.5% per annum from the date of filing of the petition till date of deposit, as directed by the Tribunal within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier. The appellant/Insurance Company is entitled to recover the said amount from the insurer viz., the third respondent/owner of the vehicle by way of filing execution petition without actually filing a suit for recovery of the said amount. Consequently, connected Miscellaneous Petitions are closed. However, there is no order as to costs.