
(2015) 03 MAD CK 0001

In the Madras High Court

Case No : C.M.A(MD)No.353 of 2014 and M.P(MD)No.1 of 2014

National Insurance Company Ltd.

APPELLANT

Vs

J. Thilaga Jackson

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2016) 1 TNMAC 117

Hon'ble Judges : Mr. D. Hariparanthaman, J.

Bench : Single Bench

Advocate : Mr. N. Murugesan, Advocate, for the Petitioner; Mr. T. Selvakumaran, Advocate, for the Respondent Nos. 1 to 3; No appearance, for the Respondent Nos. 4 to 6

Final Decision : Disposed Off

Judgement

Mr. D. Hariparanthaman, J.—Though the 6th respondent/owner of the offending vehicle served through paper publication, he has not chosen to appear.

2. A memo dated 19.03.2015 has been filed by the learned counsel for the claimants stating that the 4th respondent/Thangam Paul died on 02.03.2015 and the legal representatives of the 4th respondent are respondents 1 and 3. The memo is taken on record.

3. The only issue argued in this appeal is that the Tribunal committed error in not directing the Insurance Company to pay the amount of compensation and directing to recover the same from the owner. Learned counsel for the appellant has contended that such order should have been passed by the Tribunal, since there was a violation of policy condition, as the offending vehicle had plied without a valid permit. He brought to my notice paragraph 10 of the judgment passed by the Tribunal. The relevant passage is extracted hereunder:-

"Admittedly the 1st respondent has not produced any indoor investigation report before this Court. However, the 3rd respondent took steps to examine R.W.2 Seetharamara Raja, who is the Motor Vehicle-Inspector at Pondichery. RW2

deposed before this court as the offending vehicle PY 01 N 8350 is a Contract Carriage vehicle and also produced Ex.R4 the copy of the permit given to the vehicle and also Ex.R5 the copy of the permit register before this Court and further stated that the vehicle was not given any permit to ply in Tamil Nadu where the accident took place. But in his cross-examination, R.W.2 admitted the possibility for plying the vehicle in Tamil Nady after getting special permission."

4. In support of his contention, learned counsel for the appellant relied on a judgment of this Court in Sankar v. M.Ramasamy, 2008 (6) MLJ 817. In that case, while allowing the appeal filed by the claimant, a learned single Judge of this Court held that since the offending vehicle had plied without a valid permit, the insurance company should pay the award amount to the claimants and then recover the same from the insured and the insurer can straightaway levy execution proceedings, without filing a separate suit.

5. I am in entire agreement with the contention of the learned counsel for the appellant and the decision relied on by him would lend support to the facts of this case. Further, it is well settled that the Apex Court and this Court in a catena of the following decisions, have consistently taken a view that the insurer shall pay the compensation and thereafter, they shall recover the amount from the vehicle owner, whenever the compensation was ordered on the ground that the driver did not posses valid license. The decisions are as follows:

(i) 2011(1) TN MAC 641 (SC) - Jawahar Singh v. Bala Jain

(ii) (2013) 7 Supreme Court Cases 62 - S.Iyyapan v. United India Insurance Co. Ltd.

(iii) 2010(2) TN MAC 388 (DB) - United India Insurance Company Limited v. V.Vijayakumar

(iv) 2010(2) TN MAC 542 (DB) - Bajaj Allianz General Insurance Company Ltd. v. P.Manimozhi

(v) 2009 (2) TN MAC 103 (DB) United India Insurance Co. Ltd. v. S.Saravanan & another (DB)

6. In view of the categorical pronouncement of this Court and the Apex Court as referred to above, the Civil Miscellaneous Appeal is disposed of by modifying the order of the Tribunal by directing the appellant to pay compensation to the claimants and thereafter recover the same from the insured. The claimants are permitted to withdraw their respective shares in the award amount deposited by the appellant pursuant to the order dated 04.06.2014 of this court, less the amount already withdrawn, if any. Consequently, M.P(MD)No.1 of 2014 is closed. No costs.