(2017) 11 MAD CK 0009

In the Madras High Court

Case No : 687 and 688 of 2011 and M P (MD)Nos 1 and 1 of 2011

The New India Insurance Company Ltd., Represented through its, Divisional Manager, Madurai — APPELLANT

Vs

Minor Venthan, & Ors. — RESPONDENT

Date of Decision : 21-11-2017

Acts Referred:

Citation : (2017) 11 MAD CK 0009

Hon'ble Judges : J.Nisha Banu

Bench : SINGLE BENCH

Advocate : J.Nisha Banu

Judgement

1. The Civil Miscellaneous Appeals have been filed against the award and decree dated 23.12.2010 made in M.C.O.P.Nos.37 and 38 of 2006

on the file of Motor Accidents Claims Tribunal(Additional District Court/Fast Track Court No.2), Madurai.

2. Since the issue involved in the both the civil miscellaneous appeals are inter-woven to each other, both the appeals are taken up together and

disposed of by this common judgment.

2.1. The brief facts of the case are as follows:

The first respondent in C.M.A.(MD).No.688 of 2011 is the mother of Master.Venthan, who is the first respondent in C.M.A.(MD).No.687 of

2011. It is a case of injury. On 01.11.2005, at about 01.00 p.m., when the petitioners were standing in front of their house, at Erukkalainatham,

Madurai, at that time, the first respondent''s vehicle Bajaj M-80 bearing Registration Number T.N.59 T 7369 was driven by its driver in a rash and

negligent manner and dashed against the petitioners. Due to the impact, the petitioners sustained injuries. Hence, the injured claimants filed a

separate claim petition in M.C.O.P.Nos.37 and 38 of 2006, on the file of the Motor Accident Claims Tribunal, (Additional District Court/Fast

Track Court No.2), Madurai, claiming a sum of Rs.2,00,000/- each as compensation.

3. Before the Tribunal, on the side of the claimants, five witnesses viz., P.Ws.1 to 5 were examined and eight documents viz., Exs.P.1 to P.8 were

marked and on the side of the respondents, two witnesses viz., R.Ws.1 and 2 were examined and nine documents viz., Exs.R.1 to R.9 were

marked.

4. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing on either side and also

appreciating the evidence on record, held that the accident occurred only due to the negligence of the first respondent''s vehicle and directed the

appellant/Insurance Company to pay a sum of Rs.84,000/- to the minor claimant and a sum of Rs.10,000/- to the mother of the minor claimant

respectively as compensation to the claimants.

5. Against which, the appellant/Insurance Company have filed the present Civil Miscellaneous Appeals.

6. The learned Counsel for the appellant would contend that it is a clear case of violation of policy conditions, since the owner of the offending

vehicle in question allowed a minor boy to drive the motorcycle without any care and caution and therefore, the Tribunal ought to have ordered

''pay and recovery''. Therefore, he would pray this Court that ''pay and recovery'' may be ordered by this Court.

7. Heard the learned counsel appearing for the appellant and the matter was admitted on 14.06.2011 itself and when the matter was taken up for

hearing, there was no representation on behalf of the respondents and this Court passed orders on the basis of the materials before this Court.

8. In the case on hand, it is useful to refer paragraph No.12 of the Court below, wherein,

The Tribunal in its judgment has held as follows:

....A perusal of the evidence of R.W.2 would reveal that the first respondent''s vehicle was driven by the first respondent''s son, one

Kumar and the condition of the police of Insurance Company was violated by the first respondent. The first respondent remained ex-

parte in this case"".

Accordingly, it fixed the liability on the first respondent''s driver. Here, the main grievance of the insurance company is that though the Tribunal

relied on various decisions with regard to ''pay and recovery'' and held that the judgments are squarely applicable to the given case, but the

Tribunal has not failed to order pay and recovery. I find much force in the submission of the learned counsel appearing for the insurance company.

On a perusal of the judgment, it is seen that at paragraph No.15, though the Court below has specifically observed that sofar as the third party is

concerned, though the insurer not liable, the insurer must pay and proceed against insured/owner of the vehicle, in the operative portion, it has

failed to observe that the second respondent shall pay the compensation to the claimants and recover the same from the owner of the offending

vehicle, namely, the first respondent before the Court below. It is well settled law that the claimants should not suffer even after obtaining an order

for compensation. Needless to mention that the provisions relating to the award of compensation are benevolent provisions in favour of claimant.

The Hon''ble Apex Court in various Judgments have formulated the policy of ""pay and recovery"" in order to help the claimants. In the present case,

there is no reason to deviate from the principle ""pay and recovery"". Accordingly, in the case on hand, pay and recovery is ordered.

9. In the result, this Civil Miscellaneous Appeals are allowed and the appellant/ Insurance Company is directed to pay the amount awarded by the

Tribunal at the first instance to the claimants and then, recover the same from the owner of the offending vehicle, namely, the second respondent in

the present civil miscellaneous appeals. The appellant Insurance Company shall deposit the entire award amount to the credit of M.C.O.P.Nos.37

and 38 of 2006, on the file of the Motor Accident Claims Tribunal, (Additional District Court/Fast Track Court No.2), Madurai, within a period of

eight weeks from the date of receipt of a copy of this order and in the later stage, the appellant Insurance Company is entitled to recover the same

from the owner of the vehicle, by way of Execution Petition, without actually filing a suit as held by Hon''ble Apex Court in the judgment reported

in 2004(2)CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others).

On making such deposit, the claimant in C.M.A.

(MD).No.688 of 2011 is at liberty to withdraw her award amount alone along with accrued interest and costs, without filing a formal application

seeking permission. Insofar as the minor share is concerned, the same shall be invested in any one of the Nationalised Banks in an renewable

scheme till he attains majority and the guardian of the minor/mother of the minor is permitted to withdraw the interest amount once in six months

directly from the Bank for the welfare of the minor child. No costs.

Consequently, connected miscellaneous petitions are closed.