

(2017) 10 MAD CK 0030

In the Madras High Court

Case No : 628 of 2015 and M P (MD) No 2 of 2015

The Oriental Insurance Company Limited, rep. by its Branch
Manager

APPELLANT

Vs

Ramar, & Ors.

RESPONDENT

Date of Decision : 27-10-2017

Acts Referred:

Citation : (2017) 10 MAD CK 0030

Hon'ble Judges : G.R.Swaminathan

Bench : SINGLE BENCH

Advocate : G.R.Swaminathan

Final Decision : Allowed

Judgement

1. The Oriental Insurance Company Limited has filed this appeal challenging the fastening of liability on it by award dated 30.01.2014 in

M.C.O.P.No.127 of 2012 on the file of the Motor Accidents Claims tribunal cum Subordinate Judge, Aruppukottai.

2. The respondents 1 to 5 are the claimants. The wife of the first respondent Mariammal had travelled as an unauthorised passenger in a goods

vehicle. The goods vehicle viz., TATA ACE bearing Registration No.TN 67 AE 7566 belongs to the sixth respondent herein. The Tribunal

awarded a sum of Rs.9,79,500/- as compensation with interest. The Tribunal applied pay and recover principle and directed the appellant herein

to satisfy the award and thereafter, recover the amount from the vehicle owner. Seeking total exoneration of liability, this appeal has been filed by

the insurance company.

3. Heard the learned counsel for the parties.

4. It is seen that the Tribunal focussed its attention more on the defence taken by the insurance company that the vehicle in question was driven by a person, who did not have a valid driving licence. In that event, of course, the principle of pay and recovery can be adopted. But, the appellant has specifically contended that the deceased ought to have travelled in the goods vehicle at all. Therefore, there is no statutory liability cast on the insurer to satisfy the award even at the first instance. In support of his contention, the learned counsel would rely on the decisions of the Hon''ble Supreme Court reported in 2008(2) TNMAC 231 - United India Insurance Co. Ltd., Vs. Suresh K.K. and another, III(2002) ACC 753 (SC) - New India Assurance Co. Ltd., Vs. Asha Rani and others and the Full Bench decision of this Court reported in 2009(1) TN MAC 1(FB) - Branch Manager, United India Insurance Co. Ltd., V. Nagammal and others. It has been held by the Hon''ble Supreme Court that the principle of pay and recovery cannot be applied against the insurer in the case of death or injury sustained by the unauthorised passenger while travelling in the goods carrier vehicle. I have no option but to follow the said decision. Therefore, the liability fixed on the appellant insurer by the Tribunal is set aside. The claimants are entitled to proceed against the vehicle owner alone viz., the sixth respondent herein.

5. Accordingly, the award dated 30.01.2014 made in M.C.O.P.No.127 of 2012 on the file of the Motor Accidents Claims tribunal cum

Subordinate Judge, Aruppukottai is modified and the sixth respondent alone is liable to pay the compensation and the sixth respondent directed to

deposit the entire compensation amount within 12 weeks from the date of receipt of a copy of this order along with interest @ 7.5.% per annum

and costs from the date of petition till the date of realization. The claimants are entitled to withdraw the the said amount as apportioned by the

Tribunal, by filing proper application before the Tribunal.

6. The Civil Miscellaneous Appeal is allowed as indicated above. No costs. Consequently, connected misappropriation petition is closed.