IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1895 of 2010

National Insurance Co.Ltd.,
First Floor, 618 Cuddalore Main Road
Post Box No.7, Attur Taluk
Salem District .. Appellant/Respondents 2

-Vs-

1. V.Vellaiyan .. Respondent 1/Petitioner
2. R.Ganesan
(R2 set ex parte before Tribunal).. Respondent 2/Respondent 1

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 8.4.2009 made in M.C.O.P.No.452 of 2006 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Salem.

For Appellant :: Mr.K.Padmanabhan
For Respondents :: Mr.Ma.P.Thangavel for R1

JUDGMENT

This appeal is directed against the impugned judgment and decree passed by the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Salem in M.C.O.P.No.452 of 2006 dated 8.4.2009, awarding a sum of Rs.1,67,000/- together with interest and costs payable by the appellant-Insurance company and recoverable from the second respondent, owner of the Tractor vehicle, after finding that the vehicle was driven by its driver having valid licence without badge, based on the details available in respect of the driving licence of the driver in Ex.A4-Motor Vehicle Inspector report.

2. Learned counsel for the appellant submitted that when the impugned vehicle was driven by its driver without any endorsement as to the badge in his driving licence, the Tribunal ought not to have applied the principle of 'pay and recover', for the simple reason that the Tribunal was not justified in holding that the driver of the vehicle involved in the accident had valid licence, after finding that the driver did not have any endorsement as to the badge in his driving licence, to drive only the Light Motor Vehicle. On this score, he pleaded that the Tribunal ought to have exonerated the appellant from paying any compensation to the first respondent/claimant, for the reason that there has been a specific finding that the impugned vehicle

was driven by its driver without any badge. Adding further the learned counsel submitted that when the vehicle involved in the accident being a transport vehicle, for which an endorsement of badge should have been obtained from the Regional Transport Officer, otherwise it would amount to violation of the provisions of the Motor Vehicles Act, namely, as per Section 10 (2) of the Motor Vehicles Act, the Tribunal ought not to have held that the impugned vehicle involved in the accident was driven by its driver with a valid licence to drive the same.

3. Opposing the above, the learned counsel for the first respondent/claimant, bringing to the notice of this Court paragraph-7 of the impugned judgment, submitted that there has been a clear finding recorded by the Tribunal that the offending vehicle has been insured with the appellant at the time of accident and the said vehicle was also driven by its driver with a valid driving licence without badge, on this score, the Tribunal has rightly come to the conclusion that the appellant shall be liable to pay the compensation to the first respondent/claimant and the same would be recoverable from the second respondent, the owner of the vehicle. In support of his submissions, the learned counsel for the first respondent also submitted that it is a proven case of 35% disability, for which the disability certificate was also produced and in respect of the disability, the doctor was also examined as PW2, who also issued the disability certificate marked as Ex.A8. Only on the basis of the evidence of the doctor-PW2, the Tribunal has rightly come to the conclusion that the injured victim had sustained discomfort in his right leg while walking. Adding further the learned counsel further submitted that this could be further seen from the discharge summary marked as Ex.A6 showing that the claimant was taking treatment from 15.2.2006 to 27.2.2006 as an in-patient by spending nearly Rs.53,000/- as per Ex.A7. Concluding his arguments the learned counsel, taking support from the ratio laid down by the Apex Court in the case of Oriental Insurance Co.Ltd., v. Shri.Nanjappan and others, 2004 (2) CTC 464, has further submitted that when the Apex Court, following the judgment in National Insurance Co.Ltd., v. Baljit Kaur and others, 2004 (1) CTC 210, has clearly held that the insurer shall pay the quantum of compensation fixed by the Tribunal, the appellant cannot have any grievance. When the principle of 'pay and recover' has been rightly fixed and liberty also has been granted to the appellant to recover the same from the owner of the vehicle which was involved in the accident, the impugned judgment ought not to have been appealed against.

4. In reply, the learned counsel for the appellant-Insurance company also fairly submitted that although the principle of 'pay and recover' has been ordered, in the present case, on the basis of the settled principle that so long as the victim suffered injury-the liability is absolute, the insurance company/appellant herein would be in a better position to proceed against the owner of the vehicle, if there is a

direction from this Court giving liberty to the appellant to proceed against the owner of the vehicle in question.

5. This Court, agreeing with the said request and without interfering with the impugned judgment in respect of the quantum on the basis of the evidence let in by the parties, following the ratio laid down by the Apex Court in Oriental Insurance Co.Ltd., v. Shri.Nanjappan and others, 2004 (2) CTC 464 and in National Insurance Co.Ltd., v. Baljit Kaur and others, 2004 (1) CTC 210, directs the appellant-Insurance company to pay the entire quantum of compensation as fixed by the Tribunal in a sum of Rs.1,67,000/- with 7.5% interest per annum from the date of petition till the date of payment to the first respondent/claimant. It is also made clear that for the purpose of recovering the sum from the insured, the owner of the vehicle, the insurer shall not be required to file a suit, as the mode of recovery enunciated by the Apex Court in Nanjappan and others case (supra) can be made use of by the appellant-Insurance company. Since the appellant had deposited only 50% of the award amount to the credit of the M.C.O.P.No.452 of 2006 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge), Salem, the appellant-Insurance company is further directed to deposit the balance 50% amount within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the first respondent/claimant is permitted to withdraw the entire award amount along with the accrued interest by moving appropriate application before the Tribunal.

6. With the above observations and directions, the civil miscellaneous appeal is dismissed. Consequently, the interim order stands vacated and the M.P.No.1 of 2010 is also dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
1. The Motor Accidents Claims Tribunal
Principal Subordinate Judge
Salem
2. The Branch Manager
National Insurance Co.Ltd.,
First Floor, 618 Cuddalore Main Road
Post Box No.7, Attur Taluk
Salem District
+1 cc to Mr.K.Padmanabhan, Advocate, sr.62157
+1 cc to M/s.Ma.P.Thangavel, Advocate, sr.62110

ad co, kra 11.02.2016