



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2015

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.M.A. (MD) No.1103 of 2015

WEB COPY

P.Panchammal @ Panju

... Appellant / Petitioner

-vs-

1.K.Chellamuth

2.The Branch Manager

Branch Office

The Oriental Insurance

Company Limited

No.1, Loyola Building

(1st Floor), Salai Road

Dindigul-624 001

Dindigul District

... Respondents / Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the Judgment and Decree passed in M.A.C.O.P.No.42 of 2009, on the file of Chief Judicial Magistrate / Motor Accidents Claims Tribunal, Dindigul dated 29.02.2012.

For Appellant : Mr.R.Senthilkumar

For Respondents : No appearance

J U D G M E N T

In spite of service, none appeared for the respondents. As there is only a short point is involved, we will dispose of this civil miscellaneous appeal based on the arguments of the learned counsel for the appellant and the materials on record.

2. On 25.02.2008, at about 07.30 a.m., on the Ottanchattiram-Vedasandur Main Road, a road accident took place. In the road accident, the appellant / claimant sustained grievous injuries. She claimed compensation before the Motor Accident Claims Tribunal.

3. The Tribunal, appreciating the evidence held that the accident was due to the rash and negligent driving of the rider of the first respondent's motorcycle, which has been insured with the second respondent / Insurance Company and determined the compensation at Rs.67,300/-. However, since at the time of the accident, the rider of the first respondent's motorcycle was not holding a driving licence, the Tribunal had exonerated the second respondent / Insurance Company from paying the compensation amount.



4. In *Oriental Insurance Co. Ltd., v. Shri Nanjappan and others* (2004 (1) TN MAC (SC) 211), the Hon'ble Apex Court held as follows:

"8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in *Baljit Kaur's* case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall, take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

5. The principle behind this 'pay and recover' is to see that the injured or the dependents of the deceased in a road accident should not be allowed to go in high and dry with a paper (award) decree in their hands. On the other hand, while directing the Insurer to pay the compensation, it is to see that the Insurance Company shall not suffer so enabling it to recover the amount from the vehicle owner.

6. In the circumstances, award is also passed as against the second respondent / Insurance Company. The second respondent will deposit the entire award amount including the costs and interest, to the credit of M.C.O.P.No.42 of 2009, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Dindigul, within four weeks from the date of receipt of a copy of this Judgment. On such deposit, the second respondent is entitled to proceed in execution as against the vehicle owner, without filing a separate suit. The second respondent will have all the remedies available under Order XXI C.P.C. It can also seek remedy as against the offending vehicle. On the request of the Company, the concerned Regional Transport Officer shall render necessary assistance. The appellant / claimant shall be paid the entire amount, less amount, if any already received.

7. Accordingly, this civil miscellaneous petition is disposed of. No costs.

Sd/-

Assistant Registrar



To

1.The Principal District Judge,
Dindigul.

2.The Chief Judicial Magistrate, The Motor Accident Claims Tribunal,
Dindigul.

+1cc to Mr.R.Senthilkumar, Advocate SR.No.58457

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NS/JGB/27.10.2015 : 3P/4C