BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.08.2015
CORAM:
THE HONOURABLE MR.JUSTICE P.DEVADASS
C.M.A. (MD) No.816 of 2015
and
M.P.(MD) No.1 of 2015

The Oriental Insurance Company Ltd.,
rep.by its Divisional Manager
layola Building First Floor
Dindigul ... Appellant / 2nd Respondent

-vs-

1.Baskaran @ Vallaiyakonar ... 1st Respondent/Petitioner

2.S.Arunkumar ... 2nd Respondent / 1st Respondent
(R2 remained ex parte before Lower court)

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to setaside the Award made in M.C.O.P.No.280 of 2013, dated 02.02.2015, on the file of the Motor Accident Claims Tribunal-cum-Special Judge (in-charge), Dindigul.

For Appellant : Mr.K.Bhaskaran

J U D G M E N T

This civil miscellaneous appeal directed by the Insurance Company lies in a narrow compass, namely, what is the mode of pay and recover.

2. This matter arose out of a claim made by an injured person in a road accident.

3. The Tribunal, appreciating the evidence oral and documentary and considering the arguments of both sides, fastened the negligence on the part of the driver of the erring vehicle and directed the Insurance Company to perform its obligation under the contract of insurance, in other words, it had enforced the indemnification.

4. Now, noting down the penultimate part of the Award of the Tribunal, the insurer seems to be in a bewilderment. In the circumstances, the learned counsel for the appellant seems to have made a survey of the case laws relating to the concept of pay and recover. In this regard, he seems to have struck a gold mine in Oriental Insurance Co. Ltd., v. Shri Nanjappan and others (2004 (1) TN MAC (SC) 211) dealing with the point at issue before us.

5. In Nanjappan's case (Supra), the Hon'ble Apex Court made the following observations:

> "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.”

6. 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.

7. On reading the final portion of the Award, it is seen that the fear of the Insurance Company is that there is a muddle in putting the principle of pay and recover in operation.

8. In the circumstances, it is made clear in Para No.16 of the Award of the Tribunal, that the appellant / Insurance Company on deposit of the award amount is entitled to recover the same from the vehicle owner. It need not be driven to file a separate suit. However, it may initiate execution proceedings before the Executing Court. The insurer is also empowered to have recourse the relief of attachment before Judgment in execution as against the vehicle and other properties strictly in accordance with law. The concerned Road Transport Officer will render necessary assistance to the insurer. It is made clear that the insurer shall deposit the entire award amount including the costs and interest, to the credit of M.C.O.P.No.280 of 2013, on the file of the Motor Accident Claims Tribunal / Sub Court, Dindigul, within a period of six weeks from the date of receipt of a copy of this Judgment.

9. Accordingly, this civil miscellaneous petition is disposed of with the said modification. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
The Assistant Registrar(crl.side)

/True copy/

Sub-Assistant Registrar

To:
The Special Judge (in-charge),
Motor Accident Claims Tribunal,
Dindigul.

+1cc to Mr.K.Bhaskaran, Advocate SR.No.43794

Krk
sm:03.09.2015:2P/3C

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