BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.08.2015
CORAM:
THE HONOURABLE MR.JUSTICE P.DEVADASS
C.M.A. (MD) No.843 of 2015
and
M.P.(MD) No.1 of 2015

M/s.United India Insurance Co., Ltd.,
Divisional Office
Promenode, Cantonment
Trichy & District ... Appellant / 2nd Respondent

-vs-

1.Parameshwari ... 1st Respondent / Claimant
2.M.Hajee ... 2nd Respondent / 1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree, dated 20.09.2012 made in M.C.O.P.No.132 of 2008, on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.

For Appellant : Mr.B.Rajesh Saravanan

For Respondents : Mr.M.Saravanan for R2

J U D G M E N T

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

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

3. The Tribunal, appreciating the evidence oral and documentary and 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. The learned counsel for the appellant / Insurance Company contended that at the time of accident the driver of the erring vehicle was not holding valid driving licence and he has no batch to drive such a vehicle. In this connection, necessary evidence let in on behalf of the appellant / Insurance Company, however, the Tribunal overlooked this aspect.

5. On perusing the materials available on record, I have no hesitation to hold that the contention of the appellant / Insurance Company is correct that is to say at the time of accident, the driver of the erring vehicle was not having valid driving licence to drive such a vehicle and he was also not having batch.

6. 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.

7. *Oriental Insurance Co. Ltd., v. Shri Nanjappan and others (2004 (1) TN MAC (SC) 211)* dealt with the point at issue before us. 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."*

8. 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.

9. In the circumstances, there shall be modification to the Award of the Tribunal to the effect that the appellant / Insurance Company on deposit of the award amount is entitled to recover the same from the vehicle owner in the Execution Court. 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.132 of 2008, on the file of the Motor Accident Claims Tribunal / III Additional Sub Court, Trichy, within a period of six weeks from the date of receipt of a copy of this Judgment.

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

Sd/-
Assistant Registrar(R)

/True Copy/

Sub-Assistant Registrar

To:

The III Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Trichy.

+One cc to Mr.B.Rajesh Saravanan, Advocate, SR.No.45291

krk
RL/3c - 8/9/2015

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