IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2016

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THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.2124 of 2012
and M.P.No.1 of 2012

The Oriental Insurance Company Ltd.,
Subha Govindam Building,
Imperial Road, Cuddalore. .. Appellant/2nd Respondent

.Vs.

1.S.Chinnathambi
2.A.R.Selvaramanujam ..Respondents/Petitioner/ 1st Respondent

This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree dated 30.11.2011 and made in M.C.O.P.No.1606 of 2007 on the file of the Motor Accident Claims Tribunal (Additional Sub Court No.I) Cuddalore.

For Appellant	:	Mr.R.Sivakumar
For R1	:	No appearance
For R2	:	Mr.R.Gururaj

O R D E R

Questioning the liability, the appellant/Insurance company has filed this appeal under section 173 of the Motor Vehicles Act, 1988.

2. It is manifested from the records that the first respondent herein had moved the Motor Accident Claims Tribunal, with a claim petition in MCOP.No.1606 of 2007 on the file of the Additional Sub Court No.I Cuddalore, claiming a sum of Rs.5,00,000/- for the injuries sustained by him in a road traffic accident said to have been taken place on 21.04.2007 at about 7.00 a.m., involving a tractor bearing Registration No.TN.49.D.9608 belonging to the second respondent herein.

3. The appellant-Insurance Company alone had contested the claim by filing a counter statement. However, based on the evidences both oral and documentary, the Tribunal had proceeded to award a sum of Rs.1,58,000/- directing the appellant/Insurance company as well as the second respondent herein to pay the said amount jointly and severally with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

4. It is obvious to note here that the second respondent herein being the owner of the vehicle has not preferred any appeal challenging the award. The appellant-Insurance Company alone has preferred this appeal.

5. Mr.G.Sukumar, learned counsel for the appellant has submitted that the appellant/Insurance Company had specifically taken a stand that the claimant was travelling in the tractor bearing Reg.No.TN-47-D-9608 as a gratuitous passenger and that no one should travel excepting the driver. He has also submitted that there was a policy coverage only in respect of the driver and as since, the claimant was not a driver, he was not entitled to seek any compensation. He has also added that since the injured/claimant was travelling as an unauthorized passenger, this claim petition need not be maintained under Section 163(A) of the Motor Vehicles Act, and therefore, he prays to set aside the award as against the appellant/Insurance Company, as the Tribunal had purposely and erroneously omitted to discuss the above said aspect .

6. The learned counsel for the appellant/Insurance Company has argued that he had sought the assistance of the provisions Sections 143 and 147 of the Motor Vehicles Act and therefore, the appellant/Insurance Company might be absolved from the liability of indemnifying the loss of the insured.

7. On the other hand, Mr.R.Gururaj, learned counsel appearing for the first respondent/claimant has submitted that even if it was presumed that the first respondent/claimant was an unauthorized passenger and since the tractor was duly insured with the appellant/Insurance Company, the liability of the Insurance Company could not be taken away and as per the provisions of Sections 149(2) of M.V.Act, the Insurance Company was absolutely liable to pay compensation to the aggrieved person as the offending vehicle was insured with the Insurance Company. In support of his contention, he drew the attention of this Court to the decisions of the Hon'ble Apex Court in New India Assurance Co., vs. Delhi Transport and others, 2008 Legal Eagle (SC) 199 as well as the Manager, New India Assurance Company Limited vs. Darshana Devi and Others, wherein, the Insurance Company was directed to pay the amount on behalf of the owner of the vehicle and thus, the Insurance Company had been permitted to recover the amount from the owner of the vehicle through the execution proceedings without actually filing a suit for recovery of money. It is also observed by the Apex Court in National Insurance company Ltd., vs. Saju P.Paul and Another, 2013 Legal Eagle (SC) 3, that the claim of the victim was allowed and he was directed to withdraw the amount deposited by the Insurance Company before the Court, thereafter, the Insurance Company was permitted to recover the amount from the owner. The recovery of the amount by the Insurance company

from the owner shall be made by following the procedure laid down by this court in the case of Challa bharathamma.

8. Learned counsel for the appellant has also relied upon the following two decisions of this Court viz., i)Iffco-Tokio General Insurance Co.,Ltd., vs. Sulochana and Others, 2010 ACJ 1522 and ii) Fahim Ahmad & Others vs. United India Insurance Company Ltd., and Others, 2014 Legal Eagle (SC) 216. This Court has carefully gone through the above cited decisions.

9. This Court is also of the view that following the principle laid down by a Division Bench of the Apex Court in S.IYYAPPAN vs. M/s.United India Insurance Company Ltd and another, Civil Appeal No.4834 of 2013 dated 1st July 2013, Hon'ble Mr.Justice M.Y.Eqbal in paragraph Nos.17 & 18 has observed as under:

> 17. The heading "Insurance of Motor Vehicles against Third party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.
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> 18. Reading the provisions of Sections 146 & 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurers right is safeguarded but in any event the insurer has to pay compensation when a valid certificate is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, ii) it was being driven by a person who was not having a duly granted licence, and iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a

licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

10. In view of the fact and in the light of the guiding principles laid down by the Apex Court as cited above, the appellant/Insurance Company is directed to pay the award amount to the first respondent/claimant and it may recover the amount from the owner of the vehicle, who is the second respondent herein, without actually filing any suit for recovery of money through the execution proceedings. On such deposit being made, the 1st respondent/claimant is at liberty to withdraw the entire amount along with accrued interest and cost without actually filing any formal application seeking permission.

11. With the above observation and direction, this appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

The Motor Accident Claims Tribunal
Court of Additional Subordinate Judge I, Cuddalore.

+1 cc to M/s.R.Sivakumar,advocate,sr.46852

+1 cc to m/s.R.Gururaj,advocate,sr.46643

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