BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)No.1027 of 2014
and
M.P(MD)No.1 of 2014

The Branch Manager,
National Insurance Company Limited,
D.No.786, Tenkasi Road,
Rajapalayam. ... Appellant/2nd Respondent

vs.

1)Mookan ...1st Respondent / Petitioner

2)K.Sathiyamoorthy ...2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgement and decree dated 14/05/2014 made in MCOP.No.75 of 2012 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate/Virudhunagar at Srivilliputtur.

For Appellant : Mr.J.S.Murali

For R1 : Mr.V.B.Sundareswar

JUDGMENT

The present Civil Miscellaneous Appeal has been filed to set aside the judgement and decree dated 14/05/2014 made in MCOP.No.75 of 2012 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate/Virudhunagar at Srivilliputtur.

2.It is the case of injury caused due to the accident took place on 13.06.2012 at 09.00 a.m near Rajapalayam Mudangiyar Road. The injured victim filed a claim petition in MCOP.No.75 of 2012 seeking compensation before the Motor Accident Claims Tribunal/Chief Judicial Magistrate/Virudhunagar and the Tribunal, by considering the facts and circumstances of the case, awarded Rs.1,67,000/- as total compensation with interest at 7.5% per annum and the appellant insurance company filed the present appeal challenging the Award passed by the Tribunal.

3.The learned counsel for the appellant contended that the pay and recovery ordered by the Tribunal, is incorrect in view of the fact that the driver, who was driving the offending vehicle, had not possessed a valid and effective driving licence and therefore, the liability ought not to have been fixed on the Insurance Company by ordering pay and recovery. Hence, the award passed by the Tribunal is liable to be set aside and the civil miscellaneous appeal has to be allowed.

4.In respect of the liability of the appellant, this Court and the Hon'ble Apex Court settled the principle that the claimant is a third party and even if there is any violation of policy condition, in respect of the claim made by the third parties, the Insurance Company has to pay the award amount to the claimant at the first instance and thereafter, to recover the same from the owner of the vehicle.

5.On the aspect of mode of recovery available to the insurer, the Hon'ble Supreme Court in the judgment reported in **(2004)13 SCC 224** in the case *of* **Oriental Insurance Co. Ltd., vs. Nanjappan and others**, has held as follows:-

> *"..... 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.In view of the settled principles both by this Court the order of the Tribunal relating to pay and recovery stands confirmed. The quantum of compensation awarded by the Tribunal is confirmed.

7.The learned counsel for the appellant represented that 50% of the award had already been deposited. Hence, the appellant is directed to deposit balance 50% of the award amount with proportionate accrued interest and costs, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the same through RTGS, by filing necessary application before the Tribunal concerned.

In the result, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(Chief Judicial Magistrate),
Virudhunagar at Srivilliputtur.

+1 CC to Mr.V.B.SUNDARESHWAR, Advocate, SR No.69425
+1 CC to Mr.C.CHIRISTOPHER, Advocate, SR No.69484
+1 CC to Mr.J.S.MURALI, Advocate, SR No.69862

CMA(MD)No.1027 of 2014
16.11.2016

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