BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.1055 of 2014
and
M.P.(MD)No.1 of 2014

The Manager,
United India Insurance Company Limited,
23-E. E.V.R. Road, Puthur, Promenade Road,
Cantonment,
Trichirappalli. .. Appellant /2nd Respondent

Vs.

1.Panjavarnam .. 1st Respondent / Petitioner

2.Narayanasamy .. 2nd Respondent / 1 st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Fair and Decreetal Order dated 02.04.2014 made in M.C.O.P.No.2642 of 2013, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Tiruchirappalli and praying for set aside the same.

For Appellant : M/s.Royce Emmanuel
For Respondent No.1 : Mr.N.Sudhagar Nagaraj (for R1)
For Respondent No.2 : No Appearance

JUDGMENT

The appellant/United India Insurance Company has filed the present C.M.A(MD)No.1055 of 2014, challenging the award passed in MCOP.No.2642 of 2013, dated 02.04.2014, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Tiruchirappalli.

2.It is a case of an injury caused in the accident occurred on 23.03.2010 around 04.30 p.m. near Inamkulathur-Viralimalai Road. The injured victim filed an application seeking compensation before the Motor Accidents Claims Tribunal, Special Subordinate Court, Tiruchirappalli in MCOP.No.2642 of 2013. Considering the facts and circumstances of the case, the Tribunal awarded Rs.1,61,940/-. Challenging the same, the appellant/United India Insurance Company has preferred the present appeal on the ground that the driver, who driving the vehicle which met with an accident did not possessed valid driving licence and therefore it is a violation of policy and accordingly the appellant/United India Insurance Company is not liable to pay any compensation in respect of third party victim is concerned. Accordingly, the Insurance Company ought to have been exonerated from liability.

3.The learned counsel appearing for the first respondent opposed the appeal by stating that the total exoneration is not permitted in view of the judgment of the Hon'ble Supreme Court of India in the case of **Oriental Insurance Company Limited vs. Nanjappan and others** reported in **(2004) 13 SCC 224** is applied which is extracted below:

> "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."

4.Accordingly, this Court is inclined to order pay and recovery in respect of the quantum of compensation granted by the

Tribunal and in all other aspects, the award passed by the Motor Accidents Claims Tribunal, Special Subordinate Court, Tiruchirappalli in MCOP.No.2642 of 2013, dated 02.04.2014, is confirmed and the pay and recovery is ordered and the Civil Miscellaneous Appeal is disposed of.

5.The learned counsel for the appellant/United India Insurance Company represented that the entire award amount has already been deposited. The learned counsel appearing for the first respondent/ claimant represented that she has already withdrawn 50% of the award amount and permitted her to withdraw the balance award amount with accrued interest through RTGS, by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Admn)

/True Copy/

Sub Assistant Registrar

vsa

To

The Special Subordinate Judge,
The Motor Accidents Claims Tribunal,
Tiruchirappalli.

+1cc to Mr.Royce Emmanuels Advocate Sr.No. 72837

+1cc to Mr.N.Sudhagar Nagaraj Advocate Sr.No. 73094

JAM/29.12.16/EM/MPA/ 3p-4c

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