BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.1089 of 2014
and
M.P.(MD) No.2 of 2014

The Divisional Manager,
The Oriental Insurance Company Limited,
732, P.K.S.A. Arumuga Road,
Sekar Chambers, 1st Floor,
Sivakasi,
Virudhunagar District. .. Appellant/2nd Respondent

-Vs-

1.Latha Maheswari
2.Leelavathi
3.Baskaran
4.Vinupriya
5.Lakshmi Priya .. 1 to 5 Respondents/Claimants
6.G.Sundareswaran .. 6th Respondent/Respondent No.1

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the MACT cum Principal District Court Virudhunagar District at Srivilliputhur made in MCOP No.175/2010 dated 26.02.2013 and allow the appeal with costs.

For Appellant : Mr.C.Jawahar Ravindran
For R1 to R5 : Mr.S.Nagendran

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JUDGMENT

The appellant/Oriental Insurance Company Ltd., filed the present C.M.A.No.1089 of 2014, challenging the award passed in MCOP No.175/2010 dated 26.02.2013 by the Motor Accidents Claims Tribunal-cum Principal District Court, Virudhunagar District at Srivilliputhur.

2.The appellant/Insurance Company contends that the fatal accident took place on 08.07.2010 and the heirs of the deceased filed an application for compensation before the Motor Accidents Claims Tribunal-cum-Principal District Court, Virudhunagar District at Srivilliputhur and the Tribunal, considering the facts and circumstances of the case, awarded Rs.10,22,000/- towards the total compensation.

3.The learned counsel appearing for the appellant/insurance company contends that it is a case of no driving license and the Insurance Company adduced evidence before the tribunal categorically stating that it is a case of no driving license and the liability of the Insurance Company is to be exonerated. The tribunal, without taking note of the fact that it is a case of no driving license, passed the award fixing the entire liability on the appellant/Insurance Company and therefore, the present appeal is filed by the appellant. Though the tribunal has awarded the amount, this Court is of the view that in the case of no driving license, the principle laid by the Honourable Supreme Court of India in the case of **Nanjappan and others** is to be adopted by following the pay and recovery. The tribunal has failed to consider this factor and passed the award.

4.In respect of the liability of the Insurance Company, 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 and the Hon'ble Supreme Court of India, the order of the Tribunal is modified to the extent that the appellant/Insurance company shall pay compensation to the respondents 1 to 5/claimants at the first instance and thereafter, the appellant is at liberty to recover the amount from the owner of the vehicle as per the mode stated in Nanjappan's case(supra).

7.In respect of the quantum of the award passed by the tribunal, there is no error on record. Therefore, this Court is not inclined to interfere with the total compensation granted by the tribunal.

8. It is represented by the appellant/Insurance Company that 50% of award amount has already been deposited. Therefore, the appellant/Insurance Company is directed to deposit the balance award amount with accrued interest and costs within a period of four weeks from the date of receipt of a copy of this order. The **(*) respondents 1 to 3**/claimants are entitled withdraw their shares as apportioned by the Tribunal, through RTGS, by filing necessary applications before the Tribunal.

With the above-said modification, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (C.O)

(*)CORRECTED VIDE ORDER DATED 23.12.2017 MADE IN CMA(MD)No.1089/2014

/True copy/

Sub Assistant Registrar

(*)TO BE SUBSTITUTED TO THE ORDER ALREADY DESPATCHED ON 8.5.2017

To

1. The Motor Accident Claims Tribunal,
   Principal District Court Virudhunagar District at
   Srivilliputhur.

2. The Section Officer,V.R Section, (2 copies)
   Madurai Bench of Madras High Court,
   Madurai.

+1 CC to MR.C.JAWAHAR RAVINDARAN, Advocate, SR No. 68261
SKN
PSM/RSK/SAR4/28.04.2017/3P/4C
RL/5C/3P/KK/SAR1/1/2/2018

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