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.1151 of 2014
and
M.P.(MD) No.1 of 2014

The Divisional Manager,
The Oriental Insurance Company Limited,
Divisional Office,
Salai Road,
Dindigul. .. Appellant/2nd Respondent

-Vs-

1.Gunasekaran .. 1st Respondent/Petitioner
2.Chandranarayanan .. 2nd Respondent/Respondent No.1

Prayer:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 08/04/2013 of the Deputy Commissioner for Workmen's Compensation, Dindigul, passed in W.C. No. 210 of 2007.

For Appellant : Mr.C.Jawahar Ravindran
For R2 : Mr.M.Prabhu

JUDGMENT

The appellant/Oriental Insurance Company Ltd., filed the present appeal challenging the award passed in W.C.No.210 of 2007 dated 08.04.2013 by the Deputy Commissioner for Workmen's Compensation, Dindigul.

2.It is the case of injury and the accident took place on 13.04.2007. The victim filed an application before the Deputy Commissioner for Workmen's compensation, Dindigul, for compensation and the Competent Authority, considering the facts and circumstances of the case, awarded Rs.1,10,109/- towards the total compensation. The appellant/Oriental Insurance Company filed the present appeal on the sole ground that there is no badge endorsement for the driver, who was driving the vehicle, which met with an accident. Since the driver was not in possession of a valid badge, it is a case of violation of policy condition and the insurance company is not liable to pay compensation to the victim. Therefore, the appellant/insurance company is to be exonerated.

3.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.

4.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."

5.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 respondent/claimant 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).

6. It is represented by the appellant / Insurance Company that the entire award amount has already been deposited. Therefore, the respondent/claimant is entitled to withdraw the deposited amount, through RTGS, by filing necessary applications before the Tribunal.

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

Sd/-
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To
The Deputy Commissioner for Workmen's Compensation,
Dindigul.

+1 CC to Mr.C.Jawahar Ravindran, Advocate, SR No. 68259
SKN
PSM/JC/SAR4/13.04.2017/3P/3C

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