BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.1199 of 2016
and
C.M.P.(MD)No.10542 of 2016

National Insurance Co., Ltd.,
through its Branch Manager,
333/1, Sekkalai Road,
Karaikudi Town,
Sivagangai District. .. Appellant/2nd Respondent

-Vs-

1.R.Karmegam .. 1st Respondent/Petitioner
2.A.Samaya Muthu .. 2nd Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 02.05.2005 made in M.C.O.P.No.152 of 2003 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

For Appellant : Mrs.Uma Ramanathan
For 2nd Respondent : No appearance

JUDGMENT

The appellant/National Insurance Company Ltd., filed the present C.M.A.(MD)No.1199 of 2016, challenging the award passed in M.C.O.P.No.152 of 2003 by the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Sivagangai.

2.The facts in nutshell is that the accident took place at about 5.15 p.m. on 25.04.2003 near Gandhi Street - Madurai Road Junction at Sivagangai Town, in which the 1st respondent/claimant sustained injuries. The claimant filed application seeking compensation before the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai and the Tribunal considering the facts and circumstances of the case awarded Rs.3,00,000/- towards total compensation.

3.The award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.152 of 2003 on 02.05.2005 is challenged by the appellant Insurance Company mainly on the ground that the driver of the vehicle, which met with the accident, did not possess valid driving licence and he was holding only learned licence and therefore, it is to be construed that it is a case of no licence and the Tribunal ought to have exonerated the Insurance Company from the liability.

4.Evidence on record shows that the driver had no valid driving license to drive the two-wheeler and there is a violation of policy condition. In respect of the liability of the appellant, this Hon'ble High 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 this aspect, in the judgment reported in (2004)13 SCC 224 in the case *of* Oriental Insurance Co. Ltd., vs. Nanjappan and othe*rs*, the Hon'ble Apex Court made the following observations:-

> “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.”

6.In view of the settled principles both by this Hon'ble Court and the Hon'ble Supreme Court of India, as this case is one of violation of policy conditions, this Court is inclined to consider the principle of Pay and Recovery.

7.In the case on hand, the Tribunal while awarding Rs.3,00,000/- together with interest at the rate of 7.5% p.a. has not directed the appellant to pay the award amount and thereafter, recover from the owner of the vehicle. Hence, this Court modify the award of the Tribunal by directing the appellant Insurance Company to pay the award amount at the first instance and thereafter recover it from the owner of the vehicle in consonance with the settled position of law.

8.Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected C.M.P.(MD) No.10542 of 2016 is closed.

9.The learned counsel for the appellant/Insurance Company informed that the entire award amount has been deposited before the Tribunal and accordingly the appellant Insurance Company is at liberty to recover the award amount from the owner of the vehicle by filing appropriate proceedings before the Executing Court. The 1st respondent/claimant is permitted to withdraw the entire award amount with proportionate accrued interest and costs by making necessary applications before the Tribunal.

Sd/-
Assistant Registrar(Writs)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Sivagangai.

Sj
RL/2C/3P/RR/28.12.2016

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