BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.1213 of 2016
and
C.M.P.(MD)No.10601 of 2016

National Insurance Company Limited,
Through its Branch Manager,
Office at Anguvilas Building,
North Car Street,
Nagercoil 629 001 ..Appellant/Respondent No.2

-Vs-

1.S.Nagarajan ..Respondent No.1/Petitioner
2.Selvaraj .. Respondent No.2/Respondent No.1

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.03.2013 passed in M.C.O.P.No.1044 of 2012 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Tirunelveli.

For Appellant : Mr.D.Sivaraman
For 2nd Respondent : Mr.S.Ramakrishnan

JUDGMENT

The appellant/Insurance Company Limited filed the present civil miscellaneous appeal, challenging the award passed in M.C.O.P.No.1044 of 2012 dated 22.03.2013 by the Motor Accident Claims Tribunal (IV Additional District Judge), Tirunelveli.

2.It is the case of injury caused due to the accident that took place on 19.05.2010 at about 07.30 p.m on the Nagerkoil - Thuckalay Main Road. The injured/victim, filed a claim petition seeking compensation before the Motor Accident Claims Tribunal (IV Additional District Judge), Tirunelveli. The Tribunal, considering the facts and circumstances of the case awarded a sum of Rs.5,61,000/- as total compensation with interest at 7.5% p.a, against which, the appellant Insurance Company Limited preferred the appeal on the ground that the driver, who was driving the vehicle at the time of the accident did not possess any valid driving licence to drive the vehicle and the same is in violation of the policy condition and on another ground that the Tribunal has committed an error in fixing the liability on the Insurance Company to pay the compensation, though the negligence is on the part of the owner of the vehicle.

3.The learned counsel for the second respondent vehemently opposed the appeal filed by the appellant stating that owner of the vehicle is now in the stage of mental disorder and unable to know the consequence.

4.This Court could not able to consider such contention pointed out by the learned counsel for the second respondent in view of the principles laid down by the Hon'ble Supreme Court.

5.It is seen that it is a case of “no licence”. Hence, the Tribunal ought to have adopted the settled principles laid down the decision of the Supreme Court of India in the judgment reported in **(2004)13 SCC 224 in the case *of* Oriental Insurance Co. Ltd., vs. Nanjappan and othe*rs.***

6.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.

7.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 othe*rs,*** 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."

8.In view of the settled principles both by this Court and the Hon'ble Supreme Court of India, the appellant is directed to pay compensation to the 1st respondent/claimant at the first instance and thereafter, the appellant is at liberty to recover the amount from the 2nd respondent, as per the mode stated in ***Nanjappan's*** **case (supra)**. The quantum of compensation of Rs.5,61,000/- with interest at 7.5% p.a, per annum is just and reasonable.

9.In the result, this Civil Miscellaneous Appeal is disposed of. The award passed by the Tribunal in M.C.O.P.No.1044 of 2012 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Tirunelveli is confirmed in all respects. No costs. Consequently, connected miscellaneous petition is closed.

10.The appellant Insurance Company is directed to deposit the entire 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, if not deposited already. Hence, the first respondent/claimant is permitted to withdraw the entire award amount with accrued interest and costs through RTGS (Real Time Gross Settlement) by filing necessary application before the Tribunal concerned.

Sd/-
Deputy Registrar[Accounts]

/True copy/

Sub Assistant Registrar

To

The IV Additional District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

<u>Copy To:-</u>

The Section officer, V.R. Section,
Madurai Bench of Madras Highcourt, Madurai.

+1CC TO MR.D.SIVARAMAN,ADVOCATE, SR.70048
+1CC TO MR.S.RAMAKRISHNAN,ADVOCATE, SR.69824
CLA
TE/SS2-KSM : 25/01/2017 : 3P/5C