BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)Nos.1223 to 1225 of 2016
and
C.M.P(MD)Nos.10897, 10635 and 10636 of 2016

CMA(MD)No.1223 of 2015
M/s.National Insurance Company Limited,
Through its Divisional Manager,
No.3, North Veli Street,
Madurai. ... Appellant/Respondent

vs.

1)Shanthi ...1st respondent/Petitioner
2)S.Ponmurugan ...2nd Respondent/2nd Respondent

CMA(MD)No.1224 of 2015
M/s.National Insurance Company Limited,
Through its Divisional Manager,
No.3, North Veli Street,
Madurai. ... Appellant / Respondent 1

vs.

1)Vilvaraj ...1st Respondent/Petitioner
2)S.Ponmurugan ...2nd Respondent/2nd Respondent

CMA(MD)No.1225 of 2015
M/s.National Insurance Company Limited,
Through its Divisional Manager,
No.3, North Veli Street,
Madurai. ... Appellant / 2nd respondent

vs.

1)K.Panchavarnam ...1st Respondent/Petitioner
2)S.Ponmurugan ...2nd Respondent/2nd Respondent

Appeals filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 30.04.2013 made in MCOP Nos.125, 126 and 124 of 2012 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Madurai.

For Appellant(Both CMA) : Ms.P.Malini

COMMON JUDGMENT

These are the cases of injury caused due to the accident took place on 04.04.2009 about 10.45 a.m near TPK Road near Nithila Hospital, Madurai. The victims/claimants filed applications in MCOP Nos.125, 126 and 124 of 2012 before the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Madurai and the Tribunal, considering the facts and circumstances, awarded compensation of Rs.98,000/-, Rs.12,000/- and Rs.12,000/- respectively. Challenging the Awards, the appellant insurance company has filed the present appeals, on the sole ground that the driver who was driving the offending vehicle insured with them, did not possess any licence at all or it is a case of no licence and therefore, the Tribunal ought to have exonerated the appellant from the liability to pay compensation, instead of ordering pay and recovery.

2.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.

3.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."

4.In view of the settled principles both by this Court and the Hon'ble Supreme Court of India, this Court is of the view that the order of pay and recovery passed by the Tribunal is in order and there is no infirmity in the same warranting interference by this Court. However, the appellant is permitted to recover the award amount from the owner of the vehicle as per the mode of recovery stated in *Nanjappan's* case(supra). Accordingly, these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, C.M.P(MD)Nos.10897, 10635 and 10636 of 2016 are closed.

5.The appellant is directed to deposit the entire award amount in each of the cases, with proportionate accrued interest and costs, to the credit of the claim petitions, within a period of four weeks from the date of receipt of a copy of this judgment, if not deposited already. On such deposit, the respondent/claimant in all the cases, are permitted to withdraw the same, less the amount already withdrawn, if any, through RTGS, by filing necessary applications before the Tribunal.

Sd/-
Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To
The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Madurai.

+1 CC to M/s.P.MALINI, Advocate, SR No.70944

CMA(MD)Nos.1223 to 1225 of 2016
21.11.2016

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