BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.1219 of 2014
and
M.P.(MD)No.3 of 2014

The Divisional Manager,
M/s.Oriental Insurance Company Limited,
1st Floor, Layolo Building,
Salai Road,
Dindigul - 23. .. Appellant/2nd Respondent

-Vs-

1.R.Chinnakalai .. 1st Respondent/Petitioner
2.P.Jorome .. 2nd Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.05.2012 made in M.C.O.P.No.77 of 2011 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Theni.

For Appellant : Mr.C.Ramachandran
For 1st Respondent : Mr.S.P.Maharajan
For 2nd Respondent : No appearance

JUDGMENT

The appellant/Oriental Insurance Company Ltd., filed the present C.M.A.No.1219 of 2014, challenging the award passed in M.C.O.P.No.77 of 2011 by the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Theni.

2.The accident took place on 13.05.2011 at 3.00 a.m. and it is a case of injury. Considering the facts and circumstances of the case, the Tribunal awarded the total compensation of Rs.1,91,000/- along with interest at the rate of 7.5% p.a. The appellant Oriental Insurance Company preferred this Civil Miscellaneous Appeal mainly on the grounds that the compensation awarded is excessive and the driver who was plying the vehicle did not possess valid licence and the appellant insurance company should be exonerated from its liability.

3.The learned counsel for the 1st respondent opposed the appeal by stating that the Tribunal had rightly ordered pay and recovery and further the quantum of compensation awarded by the Tribunal is just and fair in view of the fact that the 1st respondent/claimant suffered grievous injuries.

4.With regard to the quantum of compensation awarded by the Tribunal under various heads, this Court do not find any error. Therefore the only point to be considered is whether pay and recovery has to be ordered. Evidence on record shows that the driver of the vehicle did not possess badge to drive the auto, which is mandatory under the Rules. Therefore, he had no valid driving licence at the time of accident, which is in violation of the policy conditions. 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.1,91,000/- together with interest at the rate of 7.5% p.a. directed the appellant to pay the award amount at the first instance and thereafter, recover from the owner of the vehicle. Therefore, this Court finds no merit in the appeal and the award passed by the Tribunal in M.C.O.P.No.77 of 2011 dated 28.05.2012 on the file of Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Theni is confirmed.

8.Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected M.P.(MD) No.3 of 2014 is also dismissed.

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 through RTGS by filing appropriate application before the Tribunal.

Sd/
Deputy Registrar(Lok Adalat)

/TRUE COPY/

Sub Assistant Registrar(CS)

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

Copy to
The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.P.Maharajan, Advocate in SR.No.72505

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and
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sj
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