BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)Nos.157 of 2014 and 173 of 2015

and

M.P(MD)Nos.1 of 2014 and 1 of 2015

CMA(MD)No.157 of 2014

K.Sathish Kumar ...Appellant/Complainant

vs.

1)M.Prabhakaran
2)The Branch Manager,
The Oriental Insurance Company Ltd.,
K.A.K. Complex, 1st Floor,
No.20, Gandhi Road,
Kallakkurichi,
Villupuram District. ... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 29.10.2013 passed in MCOP.No.133 of 2012 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Vedasandur.

For Appellant : Mr.H.Lakshmi Shankar
For R2 : Mr.C.Ramachandran

CMA(MD)No.173 of 2015

The Oriental Insurance Company Ltd.,
through its Branch Manager,
Door No.20, 1st Floor,
K.A.K. Complex,
Gandhi Road,
Kallakkurichi,
Villupuram District. ...Appellant/2nd Respondent

vs.

1)K.Sathish Kumar ... R1 /Petitioner 1
2)M.Prabhakaran ... 2nd Respondent/R1

Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 29.10.2013 passed in MCOP.No.133 of 2012 on the file of the Motor Accident Claims

Tribunal, Subordinate Judge, Vedasandur.

For Appellant : Mr.C.Ramachandran
For R1 : Mr.H.Lakshmi Shankar

COMMON JUDGMENT

CMA(MD)No.173 of 2015

It is the case of an injury caused due to the accident took place on 16.01.2012 at about 12.30 p.m on Karur to Chinnatharapuram road near Solaipudur. The injured victim filed an application in MCOP.No.133 of 2012 before the Motor Accident Claims Tribunal, Subordinate Judge, Vedasandur, and the Tribunal considering the facts and circumstances of the case, awarded Rs.3,64,000/- as total compensation with interest at 7.5% per annum. Challenging the award, the appellant insurance company has filed this appeal, on the ground that it is a case, where the driver who was driving the vehicle at the time of accident was not having a valid badge endorsement and therefore, the appellant insurance company is not liable to pay any compensation and the Tribunal ought to have exonerated the appellant from the liability, and pay and recovery alone can be ordered.

2.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.

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, the order of the Tribunal directing the appellant insurance company to pay compensation to the respondent/claimant at the first instance and thereafter, recover the amount from the owner of the vehicle is confirmed and the appellant is at liberty to recover the award amount as per the mode stated in Nanjappan's case.

5.It is represented by the appellant insurance company that entire award amount with proportionate accrued interest and costs has already been deposited to the credit of the claim petition. In view of the disposal of this appeal, the respondent/claimant, is permitted to withdraw the same, less the amount already withdrawn, if any, through RTGS, by filing necessary applications before the Tribunal.

In the result, CMA(MD)No.173 of 2015 is disposed of. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

CMA(MD)No.157 of 2014

This appeal is filed by the claimant seeking enhancement of compensation.

Considering the findings recorded by the Tribunal in respect of the award of compensation, this Court is not inclined to consider the grounds of appeal raised by the claimant and accordingly, CMA(MD)No.157 of 2014 is dismissed. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

nbi

To

The Subordinate Judge,
Motor Accident Claims Tribunal,Vedasandur.

COPY TO:

THE RECORD, KEEPER, V.R.SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

+2cc to Mr.H.Lakshmi Shankar, Advocate Sr.No. 71474,71476
+1cc to Mr.C.Ramachandran, Advocate Sr.No. 72398
JAM/12.12.16/SK-SKN/ 3p-6c