BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.203 of 2015
and
M.P.(MD) No. 1 of 2015

THE BRANCH MANAGER
THE ORIENTAL INSURANCE COMPANY LIMITED

127/B, BHUNESWARI PANDIAN COMPLEX,

VIRUDHUNAGAR. .. Appellant /2nd Respondent

-Vs-

1.DEIVENDRAN .. 1st Respondent/Petitioner

2.P.SENTHIL ..2nd Respondent/1st Respondent
(R2-Exparte before
Lower Court)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in MCOP No.226 of 2013 dated 01.12.2014 on the file of the Motor Accidents Claims Tribunal cum Subordinate Judge, Virudhunagar.

For Appellant : Mr. K. Bhaskaran
For Respondents : Mr. S.Srinivasa Raghavan for R1

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in MCOP No.226 of 2013 dated 01.12.2014 on the file of the Motor Accidents Claims Tribunal cum Subordinate Judge, Virudhunagar.

2.The accident took place on 30.09.2013 at about 9.30 p.m at Railway Feeder Road near Income Tax Office, Junction Virudhunagar. It is a case of grievous injuries more specifically fractures on the right femur, right hip, right limb and all over the body. The claimant was working as an Accountant in Om Sathya Mills, Virudhunagar and was earning Rs.9,000/- per month. The tribunal, considering the facts and circumstances of the case, awarded a sum of Rs.2,17,375/- towards compensation. The present Civil Miscellaneous Appeal is filed by the Oriental Insurance Company Limited, challenging the award.

3.The learned counsel appearing for the appellant contended that while the vehicle met with an accident, the claimant did not have any valid permit and therefore, the appellant has to be exonerated from liability.

4.On reading of the award, in paragraph No.9, it is seen that the tribunal has committed an error in stating that the Insurance Company has insured the vehicle, which did not possess a valid permit and so, it is not a violation of policy condition. The Insurance Company is not a competent authority to verify the validity of the permit or otherwise. Therefore, the finding of the tribunal that the Insurance Company should verify the validity of the permit cannot be accepted and further, it cannot be included as per the condition of policy and therefore, the findings needs to be deprecated.

5.In respect of other grounds raised by the appellant that the principles of Pay and Recovery is to be ordered, the learned counsel appearing for the first respondent has no serious objection.

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 the violation of policy conditions, this Court is inclined to consider the principles of Pay and Recovery, as per the judgment of the Honourable Supreme Court in the case of **Oriental Insurance Co. Ltd., vs. Nanjappan and others** reported in **(2004)13 SCC 224.** The relevant portion of the said judgment is extracted hereunder:

> "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."

7.In the case on hand, the Tribunal has not directed the appellant to pay the award amount and thereafter, recover from the owner of the vehicle. Hence, this Court modifies the award of the Tribunal by directing the appellant Insurance Company to pay a sum of Rs.2,17,375/- (Rupees Two Lakhs Seventeen Thousand Three Hundred and Seventy Five) with accrued interest at the rate of 7.5% interest and costs and thereafter, recover it from the owner of the vehicle, namely the second respondent in consonance with the settled position of law.

9.Accordingly, this Civil miscellaneous appeal is partly allowed. Consequently, connected miscellaneous petition is closed. There is no order to costs.

10.At this stage, it is represented by the learned counsel for the appellant that the entire award amount was already deposited and the first respondent/claimant is permitted to withdraw the entire amount with accrued interest forthwith.

Sd/-
Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To
1.The Motor Accidents Claims Tribunal cum
Subordinate Judge,
Virudhunagar.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.Baskaran, Advocate SR.No.65531
+1cc to Mr.Srinivasa Raghavan, Advocate SR.No.65407

vs
sm:RR-BS:31/01/2017:3P/5C

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