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.226 of 2015
and
M.P.(MD) No. 1 of 2015

THE ORIENTAL INSURANCE COMPANY LIMITED.
REP.BY ITS BRANCH MANAGER

NAGERCOIL .. Appellant /3rd Respondent

-Vs-

1.P.ALAGAPPAN ASARI .. 1st Respondents/Petitioner

2.R.PRASANNA KUMAR ..2nd Respondent/1st Respondent

3. G.PRAMOD ..3rd Respondent/2nd Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award passed in MCOP No.11 of 2008 dated 08.04.2013 on the file of the Motor Accidents Claims Tribunal cum Subordinate Judge, Kulithurai.

For Appellant : Mr. K. Bhaskaran
For Respondents : Mr. B.Brijesh Kishore for R1

JUDGMENT

This Civil Miscellaneous Appeal filed against the award passed in MCOP No.11 of 2008 dated 08.04.2013 on the file of the Motor Accidents Claims Tribunal cum Subordinate Judge, Kulithurai.

2.The accident took place on 03.06.2007 at Sirayangudi Junction at Nagercoil, Kanyakumari District. It is a case of injury and fracture.

3.The learned counsel appearing for the appellant restricted his arguments only to the extent that the vehicle was insured with the appellant and there was no permission to enter into the territorial jurisdiction of the State of Tamil Nadu and therefore, the vehicle was not having a valid permit to enter into the territorial jurisdiction of Tamil Nadu. The permission available was only to drive in the State of Kerala and therefore, the driver has violated the policy conditions by driving the vehicle inside the territorial jurisdiction of Tamil Nadu and therefore, the Insurance Company is to be exonerated from the liability and the principles of pay and recovery has to be adopted.

4.To substantiate the above contentions, the learned counsel for the appellant has shown the findings of the tribunal that the vehicle was not in possession of valid permit to enter into the territorial jurisdiction of the State of Tamil Nadu, which is also not disputed by the learned counsel for the respondent.

5.This Court do not find any error with regard to the quantum of amount awarded by the learned tribunal and the only point to be decided is the adoption of principles of pay and recovery.

6.On this aspect, in the judgment reported in *(2004)13 SCC 224* in the case *of Oriental Insurance Co. Ltd., vs. Nanjappan and others,* 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.”

7.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.

8.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.2,57,791/- 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, the learned counsel for the appellant Insurance Company represents that the entire award amount has already been already deposited and hence, the 1st respondent/claimant is permitted to withdraw the entire award amount with proportionate interest and costs by filing a formal application before the trial court.

Sd/-
Assistant Registrar(Co)

/True Copy/

Sub Assistant Registrar

To
1.The Motor Accidents Claims Tribunal cum Subordinate Judge,
Kulithurai.
2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Bhaskaran, Advocate Sr.No. 65528
+1cc to Mr.B.Brijesh Kishore, Advocate Sr.No. 65907

VS
AE/PM PN/07.02.2017/3p/5c

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