BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)No.432 of 2014

Padmavathi ... Appellant/Petitioner

vs.

1)Selvaperumal
2)The Branch Manager,
Bajaj Alliance General Insurance Company Limited,
2nd Floor, Khadhi Bhavan,
108, TPK Road,
Madurai. ... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 20.09.2010 passed in MCOP.No.74 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thoothukudi.

For Appellant: Mr.S.Siva Thilakar
For R1 : No appearance
For R2 : Mr.J.S.Murali

JUDGMENT

It is the case of an injury caused due to the accident took place on 23.08.2009 about 13.30 hours at State Bank Colony, Thoothukudi. The injured victim filed an application in MCOP.No.74 of 2009 before the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thoothukudi, and the Tribunal considering the facts and circumstances of the case, awarded Rs.1,10,600/- as total compensation with interest at 7.5% per annum. The present appeal is filed by the appellant/claimant, challenging the award passed by the Tribunal, on the ground that the liability was wrongly fixed on the owner of the vehicle, instead of ordering for pay and recovery. The findings of the Tribunal is that the driver, who was driving the vehicle which met with the accident was not in possession of a valid driving licence and therefore, the insurance company cannot be held liable.

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 is modified to the extent that the 2^{nd} respondent company shall pay compensation to the appellant/claimant at the first instance and thereafter, the appellant is at liberty to recover the amount from the 1^{st} respondent/owner of the vehicle and the 2^{nd} respondent is directed to recover the award amount as per the mode stated in Nanjappan's case(supra).

5.The 2^{nd} respondent insurance company is directed to deposit the entire award amount with proportionate accrued interest and costs, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant, is permitted to withdraw the same, through RTGS, by filing necessary applications before the Tribunal.

In the result, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Thoothukudi.

+1cc to Mr.J.S.Murali, Advocate SR.No.71718
+1cc to Mr.S.Siva Thilakar, Advocate SR.No.71692

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