



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2016

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

C.M.A. (MD) .No.442 of 2015 &
M.P. (MD) .No.1 of 2015

The Oriental Insurance Company Ltd.,
through its Branch Manager,
Door No.555/1,
Government Hospital Street,
Maria Joseph Building,
Theni Taluk,
Theni-Vaigai District.

.. Appellant/Respondent No.2

Vs.

1.Ganesan
2.Mohammad Abdul Khadar
(R2 Given up)

.. Respondent No.1/Petitioner
.. Respondent No.2/Respondent No.1

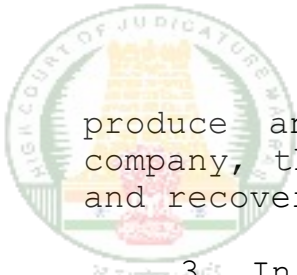
Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the order of the Motor Accident Claims Tribunal cum Sub Court, Uthamapalayam made in MCOP No.122/2011, dated 19.12.2012 and allow the appeal with costs and render justice.

For Appellant : Mr.C.Jawahar Ravidnran
For Respondents : Mr..G.Vanjinathan for R1

JUDGMENT

It is a case of injury and the accident took place on 24.11.1996 at 11 a.m. at Bypass Road, Uthamapalayam. The injured person filed an application before the Motor Accident Claims Tribunal cum Sub Court, Uthamapalayam, seeking compensation. The Tribunal considering the facts and circumstances of the case, awarded Rs.4,54,000/- towards total compensation.

2. The present appeal is preferred by the Oriental Insurance Company solely on the ground that in spite of notice for production of license by the driver, who was driving the vehicle at the time of accident, neither the owner nor the driver produced the valid driving license and the statement was also recorded by the Tribunal in its finding. When the owner of the vehicle and the driver, who was driving the vehicle, which met with the accident, were unable to



produce any evidence disputing the statement of the insurance company, this Court has no hesitation to apply the principle of pay and recovery.

3. In view of the facts and circumstances of the case, this Court is inclined to follow the principles laid down by the Hon'ble Supreme Court in ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC)***, the Hon'ble Supreme Court in paragraph 7 it has been held as follows:-

"(7)For the purpose of recovering the compensation amount 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 insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. 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 realisation by disposal of the securities to be furnished or from any other property of the insured."

4. In view of the above, the award of the Tribunal passed in M.C.O.P.NO.122 of 2010 dated 19.12.2012 is confirmed.

5. The learned counsel for the appellant represents that the entire award amount has been deposited. The first respondent/claimant is permitted to withdraw the award amount with accrued interest by filing necessary permission petition.

6. The Insurance Company is permitted to recover the award amount from the owner of the vehicle as per the mode incorporated in **Shri Nanjappan's case** referred to above.

8. With the above observation, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Uthamapalayam.

Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.G.VANJINATHAN, ADVOCATE IN SR No. 68769
+ 1 CC TO Mr.C.JAWAHAR RAVINDRAN, ADVOCATE IN SR No. 68766

JIKR
TE/PV/SAR-III : 22/12/2016 : 3P/5C

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