BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.717 of 2014
and
M.P.No.1 of 2014

The Divisional Manager,
The Oriental Insurance Company Limited,
1st Floor, Lyola Building,
Salai Road, Dindigul. .. Appellant/3rd Respondent

Vs.

1.Rajamani .. 1st Respondent/Petitioner
2.Sesuraj
3.Joseph Xavier .. 2nd & 3rd Respondents/
1st & 2nd Respondents
(2nd and 3rd respondents remained Exparte
before the lower Court)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award made in M.C.O.P.No.45 of 2011, dated 07.03.2014, on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Dindigul.

For Appellant : Mr.K.Bhaskaran
For Respondents : Mr.P.Rajagopal for
Mr.R.G.Sankar Ganesh (for R1)
R2 & R3 set exparte

JUDGMENT

The appellant/Oriental Insurance Company has filed the present C.M.A(MD)No.717 of 2014, challenging the award passed in MCOP.No.45 of 2011, dated 07.03.2014, on the file of the Motor Accidents Claims Tribunal-cum-Chief Judicial Magistrate, Dindigul.

2.It is a case of an injury caused in an accident took place on 11.11.2010. The respondent/claimant filed an application seeking compensation before the Tribunal. Considering the facts and circumstances of the case, the Tribunal awarded Rs.2,07,660/- as total compensation. Challenging the same, the appellant/Oriental Insurance Company has preferred the present appeal on the ground that the liability fixed by the Tribunal is erroneous. The learned counsel appearing for the appellant contended that the driver, who was driving the vehicle, which met with an accident was not in possession a valid driving licence and therefore, the appellant/Insurance Company is not liable to pay the compensation. The Insurance Companies are not exempted from the liability in respect of the third parties claimants as per the settled position by the Hon'ble Supreme Court of India in the case of **Oriental Insurance Company Limited vs. Nanjappan and others** reported in **(2004) 13 SCC 224** is applied which is extracted below:

> "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."

3.On reading of the award of the Tribunal, it is clear that the Tribunal rightly considered all these aspects and ordered pay and recovery, since the Tribunal itself passed an order of pay and recovery, this Court is not inclined to consider the grounds of appeal and in all other respects, the award of the Tribunal is in order require no re-consideration. Consequently, the award passed by the Tribunal in MCOP.No.45 of 2011 dated 07.03.2014, is confirmed and the Civil Miscellaneous Appeal is dismissed.

4.The appellant/Insurance Company represented that 50% of the award amount has already been deposited and the appellant is directed to deposit the balance award amount with accrued interest within a period of four weeks from the date of receipt of a copy of this order. The respondent/ claimant is permitted to withdraw the entire award amount with accrued interest through RTGS, by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal-cum-
Chief Judicial Magistrate, Dindigul.

Copy To:-

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

+ 1 CC TO Mr.K.BHASKARAN, ADVOCATE IN SR No. 73859

VSA
TE/SS2-KSM : 18/01/2017 : 3P/4C

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and
M.P.(MD)No.1 of 2014
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