BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)Nos.745 and 746 of 2014
and
M.P(MD)Nos.1 and 1 of 2014

The Oriental Insurance Company Limited,
through its Divisional Manager,
Office at Number 6-A, North Cotton Road,
Tuticorin. ... Appellant in both CMA/ 2nd Respondents an MCOP. Nos. 525 and 526 of 2013

vs.

Selvam ... R1 in CMA.No.745/16/ Petitioner in MCOP. Nos.525 of 2013

Soundararajan ... R1 in CMA.No.746/16/ petitioner in MCOP. Nos.526 of 2013

Shanmugaraj ... R2 in both CMAs/ 2ndRespondent in MCOP. Nos.525 and 526 of 2013

(2nd respondent remained ex parte before the lower court)

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 21.01.2014 made in MCOP.Nos.525 and 526 of 2013 on the file of the Motor Accident Claims Tribunal cum Special Sub Judge, Tirunelveli.

For Appellant in both CMA : Mr.K.Bhaskaran
For R1 in both CMA : Mr.T.Selvakumaran

COMMON JUDGMENT

It is the case of injury caused on account of the accident took place on 26.03.2013 around 01.30 p.m on Tirunelveli-Tiruchendur main road near PMS I.T.I. The injured claimants filed applications in MCOP.Nos.525 and 526 of 2013, seeking compensation before the Motor Accident Claims Tribunal cum Special Sub Judge, Tirunelveli, and the Tribunal considering the facts and the circumstances of the case, awarded Rs.1,67,720/- and Rs.3,14,870/-

respectively, as total compensation with interest at 9% per annum. The appellant insurance company preferred these appeals, challenging the liability and quantum.

2.In respect of the liability, learned counsel for the appellant contended that before the Tribunal, the insurance company raised the question regarding the validity of the driving licence. The procedure of calling for the documents regarding licence was followed by the insurance company and in spite of their action, the driver who was driving the vehicle, which met with the accident nor the owner, did not produce any document. In the absence of the production of any valid driving licence, it is to be construed that the driver was not in possession of a valid driving licence. The fact regarding the invalidity of licence was raised before the Tribunal and the Tribunal failed to make an observation or frame an issue in this regard. Hence, the counsel for the appellant argued that it is a case of pay and recovery and the same is to be ordered.

3.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.

4.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."

5.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 appellant insurance company shall pay compensation to the respondent/claimant in both the cases at the first instance and thereafter, recover the award amount from the owner of the vehicle as per the mode stated in *Nanjappan's* case(supra).

6.In respect of quantum, considering the nature of injuries and the age of the persons injured namely, 48 and 57 years respectively, this Court is not inclined to interfere with the quantum of compensation awarded in both the cases. Accordingly, the award passed in both the cases stand confirmed.

7.The appellant insurance company is directed to deposit the entire award amount in both the cases, with proportionate accrued interest and costs, to the credit of the claim petitions, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent/claimant in both the cases, are permitted to withdraw their shares as apportioned by the Tribunal, through RTGS, by filing necessary applications before the Tribunal.

In the result, this Civil Miscellaneous Appeals are disposed of. No costs. Consequenlty, M.P(MD)Nos.1 and 1 of 2014 are closed.

Sd/-
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar/

To

The Special Sub Judge cum
Motor Accident Claims Tribunal
Tirunelveli.

Copy To:-

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

+2cc to Mr.K.BHASKARAN Advocate SR. No.73866,73867.
+1cc to Mr.T.Selvakumaran, Advocate SR No.74050.
NBI