BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2016

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.(MD).No.839 of 2014

The Divisional Manager,
National Insurance Company Ltd.,
No.40, Pereira Street,
Thoothukudi. ... Appellant/Respondent No.3

Vs.

1.Petchiammal ..Respondent No.1/Petitioner

2.John Hershome ..Respondent No.2/Respondent No.1

3.Samuel Jebakkani ..Respondent No.3/Respondent No.2

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.68 of 2010 dated 03.06.2011 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thoothukudi.

For Appellant : Mr.N.Murugesan

For 1st Respondent : Mr.S.Rajasekaran

For Respondents 2 and 3 : Mr.V.B.Sundareswar

J U D G M E N T

The present Civil Miscellaneous Appeal filed to set aside the judgment and decree passed in M.C.O.P.No.68 of 2010 dated 03.06.2011 on the file of the Motor Accident Claims Tribunal(Chief Judicial Magistrate), Thoothukudi.

2.The accident took place on 09.08.2009 at about 4.45 p.m near Arokia Milk Booth, Tuticorin. It is the case of injury and the claim petition was filed before the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thoothukudi for compensation in M.C.O.P.No.68 of 2010.

3.The Tribunal, by considering the facts and circumstances of the case, granted a sum of Rs.1,18,900/- towards total compensation, against which, the present appeal has been filed by the National Insurance Company on the ground that the driver, who was driving the vehicle, which met with an accident, did not possess a valid driving licence. In respect of the same, they issued a notice to the driver for production of the documents. But, no document was produced. In the absence of production of any valid document by the driver of the vehicle, it is seen that it is a case of no licence. Hence, the Tribunal ought to have adopted the settled principles laid down the decision of the Supreme Court of India in *Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC).*

4.This Court considered the submissions of the learned counsel for the appellant and perused the materials available on record.

5.Considering the facts and circumstances of the case, this Court is of the view that Tribunal ought to have passed an order of pay and recovery. In all other aspects, there is no error or infirmity in the order passed by the Tribunal.

6.In respect of the liability of the appellant, 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.

7.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."

8.In view of the above, the award of the Tribunal passed in M.C.O.P. No. 68 of 2010 is confirmed. With the above observation, the Civil Miscellaneous Appeal is disposed of. No costs.

9.The learned counsel for the appellant represents that the entire award amount had already been deposited and the respondent/claimant is permitted to withdraw the entire award amount with accrued interest through RTGS by filing necessary application before the Tribunal concerned.

10. 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.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

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

+One cc to Mr.N.Murugesan, Advocate, SR.No.69687
+One cc to Mr.T.Lajapathi Roy, Advocate, SR.No.69865
+One cc to Mr.V.B.Sundhareshwar, Advocate, SR.No.69424

Copy to:-

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

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RL/6C/3P/SKS/RR/22.12.2016 C.M.A(MD).No.839 of 2014

 16.11.2016