



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.633 of 2015

and

M.P.(MD)No.2 of 2015

The Branch Manager,
The Oriental Insurance Company Limited,
Branch Office, 1st Floor,
Gopal Rav Liberty Building,
Town Hall Road, Kumbakonam - 612 001.
Thanjavur District.

.. Appellant/2nd Respondent

-Vs-

1.Peramaiyan @ Peramaiyan Poosari .. 1st Respondent/Petitioner
2.S.Amirthavalli .. 2nd Respondent/1st Respondent
(2nd Respondent remained
Exparte before the lower Court)

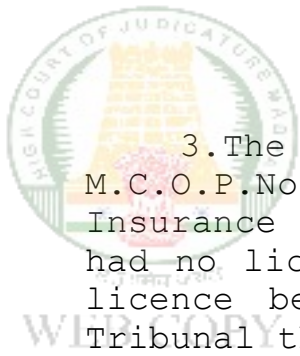
Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 02.12.2014 made in M.C.O.P.No.90 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Pudukottai.

For Appellant	: Mr.K.Bhaskaran
For 1 st Respondent	: Mr.R.Karunanidhi
For 2 nd Respondent	: Exparte before the Tribunal

JUDGMENT

The appellant/Oriental Insurance Company Ltd., filed the present C.M.A.No.633 of 2015, challenging the award passed in M.C.O.P.No.90 of 2011 by the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Pudukottai.

2.The facts in nutshell are that the accident took place at about 9.15 p.m. on 04.03.2010 near Chockampettai Diversion Ottampalam in Kandavarkottai to Pattukottai Road. It is a case of grievous injury. In turn he filed M.C.O.P.No.90 of 2011 before the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Pudukottai. Considering the facts and circumstances of the case, the Tribunal awarded Rs.1,57,250/- towards the compensation.



3.The award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.90 of 2011 on 02.12.2014 is challenged by the appellant Insurance Company on the ground that the driver of the two wheeler had no licence to drive the vehicle as he had not surrendered his licence before the Motor Vehicle Inspector and even before the Tribunal the valid driving licence was not produced.

4.The learned counsel for the appellant insurance company fairly conceded that he is not questioning the quantum of award fixed by the Tribunal and he is questioning only the liability as the driver of the two wheeler had no valid licence, which was established before the Tribunal and requested the Court to consider his prayer for pay and recovery.

5.Evidence on record shows the Junior Assistant of Regional Transport Office was examined regarding the possession of driving licence by the driver, who in turn also not deposed that the driver was having a valid driving licence by the R.T.O. concerned, but presumptively deposed that the driver may have obtained licence from any other R.T.O. Office. Such presumptive deposition cannot be accepted and inference has to be taken against the driver that he had no valid licence. Since either of the party has produced any document to prove that the driver was having a valid driving licence the benefit of doubt has to be given in favour of the insurance company.

6.In respect of the liability of the appellant, this Hon'ble High 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 this aspect, in the judgment reported in (2004)13 SCC 224 in the case of Oriental Insurance Co. Ltd., vs. Nanjappan and others, the Hon'ble Apex Court made the following observations:-

"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."

8. In view of the settled principles both by this Hon'ble Court and the Hon'ble Supreme Court of India, as this case is one of violation of policy conditions, this Court is inclined to consider the principle of Pay and Recovery.

9. In the case on hand, the Tribunal while awarding Rs.1,57,250/- together with interest at the rate of 7.5% p.a. has not directed the appellant to pay the award amount and thereafter, recover from the owner of the vehicle. Hence, this Court modify the award of the Tribunal by directing the appellant Insurance Company to pay the award amount at the first instance and thereafter recover it from the owner of the vehicle in consonance with the settled position of law.

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected M.P.(MD) No.2 of 2015 is closed.

10. The learned counsel for the appellant/Insurance Company informed that the entire award amount has been deposited before the Tribunal and accordingly the appellant Insurance Company is at liberty to recover the award amount from the owner of the vehicle by filing appropriate proceedings before the Executing Court. The respondent/ claimant is permitted to withdraw the entire award amount with proportionate accrued interest and costs by making necessary applications before the Tribunal.

Sd/-

Assistant Registrar (CS-I)

/True copy/



The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A (MD) No.633 of 2015
and
M.P. (MD) No.2 of 2015
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