BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.11.2016
CORAM :
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
CMA(MD)No.944 of 2014
and
M.P(MD)No.1 of 2014

The Oriental Insurance Company Limited,
Rep. by its Branch Manager,
Office at 1548, Tenkasi Road,
Rajapalayam,
Tamil Nadu-626 117. ... Appellant/2nd Respondent

vs.

1)K.Murugan ...1st Respondent/Petitioner
2)S.Gurunathan ... 2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 13.02.2014 made in MCOP.No.499 of 2009 on the file of the Motor Accident Claims Tribunal cum Additional Sub Judge, Tirunelveli.

For Appellant : Mr.K.Bhaskaran
For R1 : No appearance

JUDGMENT

It is the case of injury caused on account of the accident took place on 16.03.2009 around 01.00 p.m on Kondavaiyanpatti road near Thattanpati Vilakku. The injured claimant filed application in MCOP.No.499 of 2009, seeking compensation before the Motor Accident Claims Tribunal, Sub Judge, Tirunelveli, and the Tribunal considering the facts and the circumstances of the case, awarded Rs.1,49,278/-, as total compensation with interest at 7.5% per annum. The appellant insurance company preferred this appeal, on the ground that though the Tribunal found that the driver, who was driving the vehicle which met with the accident did not have the required badge endorsement in the licence, erred in not ordering pay and recovery.

2.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.

3.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 othe*rs,* 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."

4.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 1st respondent/claimant at the first instance and thereafter, recover the amount from the owner of the vehicle as per the mode stated in *Nanjappan's* case(supra).

5.The appellant insurance company is directed to deposit the entire award amount with proportionate accrued interest and costs, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment, if not deposited already. On such deposit, the 1st respondent/claimant, is permitted to withdraw the same, through RTGS, by filing necessary applications before the Tribunal.

In the result, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To
The Additional Sub Judge cum
Motor Accident Claims Tribunal, Tirunelveli.
+One cc to Mr.K.Bhaskaran, Advocate, SR.No.73865
nbi
RL/3C/2P/SKS/RR/22.12.2016

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