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.760 of 2015
and
M.P.(MD) No.1 of 2015

THE ORIENTAL INSURANCE COMPANY LTD.
REP BY ITS BRANCH MANAGER
THENI DISTRICT. .. Appellant /2nd Respondent

-Vs-

1.SNEKHA .. 1st Respondent/ Petitioner

2.VEERAMANI ..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 Award made in MCOP No. 28/2013, dated 04/02/2015 on the file of the Motor Accidents Claims Tribunal Cum Sub Judge (In- charge), Periyakulam.

For Appellant : Mr. K. Bhaskaran
For Respondents : Mr. K.Sureshkumar for R1

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree made in MCOP No. 28/2013, dated 04/02/2015 on the file of the Motor Accidents Claims Tribunal Cum Sub Judge(In-charge), Periyakulam.

2.The accident took place on 18.11.2008 at about 07.00 p.m near Kailasanathar Temple, which is coming under the control of Periyakulam Tenkarai Police Station. It is a case of fatal accident and the only legal heir had filed the claim petition and the Motor Accidents Claims Tribunal Cum Subordinate Court(In- charge), Periyakulam awarded a total compensation of Rs.3,89,169/-. The deceased was aged about 60 years at the time of death and he was a retired BSNL employee and therefore, this Court finds no error with regard to the quantum of compensation awarded by the tribunal.

3.The learned counsel appearing for the appellant confined his argument only to the point of violation of policy conditions on the ground that the driver who was driving the vehicle was not in possession of valid driving licence at the time of the accident. He further contended that the driver of the vehicle was overriding all the vehicles and 4 persons were travelling inside the vehicle at the time of the accident. Therefore, the liability of the Insurance Company is to be exonerated and the principles of Pay and Recovery has to be adopted, as per the judgment of the Honourable Supreme Court in the case of **Oriental Insurance Co. Ltd., vs. Nanjappan and others.**

4.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."

5.Heard the submissions made on either side and perused the records carefully.

6.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 principles of Pay and Recovery.

7.In the case on hand, the Tribunal while awarding Rs.3,89,169/- together with 7.5% interest p.a directed the appellant Insurance Company to pay the award amount at the first instance and thereafter, recover from the owner of the vehicle. Therefore, this Court finds no merit in the appeal and the award passed by the Tribunal in M.C.O.P.No. 28/2013, dated 04.02.2015 on the file of the Motor Accidents Claims Tribunal cum Sub Judge, Periyakulam (in-charge) is confirmed.

8.Accordingly, Civil miscellaneous appeal is dismissed. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

9.At this stage, it is represented by the learned counsel for the appellant that the award amount of Rs.3,89,169/- has already been deposited by the appellant with interest at the rate of 7.5% p.a and the respondent/claimant has already withdrawn 50% of the amount deposited. The respondent/claimant is permitted to withdraw the entire amount with accrued interest forthwith by filing necessary application before the trial court. Accordingly, the appellant Insurance Company is at liberty to recover the award amount from the owner of the vehicle/2nd respondent by filing appropriate proceedings before the Executing Court.

Sd/-
Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To

1.Motor Accidents Claims Tribunal Cum Sub Judge(In- charge),
Periyakulam.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.Bhaskaran, Advocate SR.No.65522
+1cc to MR.K.Sureshkumar, Advocate sR.No.66221

vs
sm:RR-BS:SAR 3:02/02/2017:3P/5C

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