



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

C.M.A. (MD) .No.8 of 2015 &
M.P. (MD) .No.1 of 2015

The Branch Manager,
The Oriental Insurance Company Limited,
No.3607/21,
Sathyamoorthy Road,
Pudukottai District. .. Appellant/Respondent No.2

Vs.

1.C.Karuppaiah .. Respondent No.1/Petitioner
2.M.Pandi .. Respondent No.2/Respondent No.1

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the order of the Tribunal of MACT cum Sub Court, Pudukottai made in MCOP No.177 of 2010, dated 18.09.2013 and allow the appeal with costs and render justice.

For Appellant : Mr.C.Jawahar Ravidnran
For Respondents :Mr.D.Ramesh Kumar for R1
Mr.K.Balasundaram for R2

JUDGMENT

It is a case of injury and the accident took place on 13.05.2010 at about 3 p.m. near Poonayan Kudiirupu. The injured filed an application for compensation before the Motor Accident Claims Tribunal cum Sub Court, Pudukottai, in MCOP No.177 of 2010 and the Tribunal considering the facts and circumstances of the case awarded a sum of Rs.1,15,583/- as total compensation.

2. The Oriental Insurance Company preferred the present appeal solely on the ground that it is proved before the Tribunal that the driver, who was driving the vehicle, which met with the accident, was not in possession of any license. If there is no license, the Tribunal ought to have considered the pay any recovery principle.

3. The learned counsel for the insurance company contends that the respondent are unable to disprove the fact that it is a case of no license.



4. In view of the facts and circumstances of the case, this Court is inclined to follow the principles laid down by the Hon'ble Supreme Court in ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC)***, the Hon'ble Supreme Court in paragraph 7 it has been held as follows:-

"(7)For the purpose of recovering the compensation amount 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 insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. 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 realisation by disposal of the securities to be furnished or from any other property of the insured."

5. In view of the above, the award of the Tribunal passed in M.C.O.P.NO.177 of 2010 dated 18.09.2013 is confirmed.

6. The learned counsel for the appellant represents that the entire award amount has been deposited. The first respondent/claimant is permitted to withdraw the award amount with accrued interest by filing necessary permission petition.

7. 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.

8. With the above observation, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Writ)

/True Copy/

Sub Assistant Registrar



To

The Motor Accident Claims Tribunal cum
Sub Ordinate Judge,
Pudukottai.

WEB COPY

+1cc to Mr.C.JAWAHAR RAVINDRAN Advocate Sr.No. 68765

+1cc to Mr.K.BALASUNDARAM Advocate Sr.No. 68431

COPY TO:

THE SECTION OFFICER,
V.R.SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

JAM/26.12.16/SK-SKN/3P-5C

C.M.A. (MD) .No.8 of 2015 &
M.P. (MD) .No.1 of 2015
14.11.2016