BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.912 of 2015
and
M.P.(MD)No.3 of 2015

The Manager,
M/s.National Insurance Co. Ltd.,
101-106, BMC House,
No.1, Connaught place,
New Delhi. .. Appellant/Respondent No.2

Vs.

1.C.Lakshmi .. 1st Respondent/Petitioner
2.K.Babu .. 2nd Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the Judgment and Decree dated 26.02.2013 passed in M.C.O.P.No.218 of 2011, on the file of the Motor Accident Claims Tribunal/District Judge, Karur.

For Appellant : M/s.P.Malini
For Respondents : Mr.N.Sudhagar Nagaraj (for R1)
No Appearance (for R2)

JUDGMENT

The appellant/National Insurance Company has filed the present C.M.A(MD)No.912 of 2015, challenging the award passed in MCOP.No.218 of 2011, dated 26.02.2013, on the file of the Motor Accident Claims Tribunal/District Judge, Karur.

2.It is a case of a death occurred on account of an accident took place on 09.04.2011 around 8.30 p.m. in Karur to Kovai NH-67 Main Road. The legal heir/mother of the deceased filed an application seeking compensation before the Motor Accident Claims Tribunal/District Judge, Karur in MCOP.No.218 of 2011. Considering the facts and circumstances of the case, the Tribunal awarded Rs.6,92,750/- as total compensation. Challenging the same, the appellant/National Insurance Company has preferred the appeal on the ground of liability.

3.The learned counsel appearing for the appellant/National Insurance Company contended that the driver, who was driving the vehicle, which met with an accident was not in possession of the valid driving licence and therefore, the appellant/National Insurance Company has not liable to pay compensation and the Tribunal had committed an error in not exonerating the appellant/National Insurance Company from liability.

4.The learned counsel appearing for the first respondent opposed the appeal by stating that though the driver, who was driving the vehicle, which met with an accident was not in possession of a valid driving licence. The appellant/National Insurance Company cannot be exonerated in view of the settled legal position decided by the Hon'ble Supreme Court of India in the case of **Oriental Insurance Company Limited vs. Nanjappan and others** reported in **(2004) 13 SCC 224** is applied which is extracted below:

> "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.In view of the judgment cited supra, this Court is inclined to order pay and recovery and in all other aspects, the award passed by the Motor Accident Claims Tribunal/District Judge, Karur in MCOP.No.218 of 2011, dated 26.02.2013, is confirmed, and the pay and recovery is ordered. Accordingly, this Civil Miscellaneous Appeal is disposed of.

6.The learned counsel appearing for the appellant/National Insurance Company represented that the entire award amount has already been deposited and the first respondent/claimant is permitted to withdraw the entire award amount with accrued interest through RTGS, by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal/
District Judge, Karur.

+ 1 CC TO M/S.P.MALINI, ADVOCATE IN SR No. 73437
+ 1 CC TO Mr.K.SUDHAGAR NAGARAJ, ADVOCATE IN SR No. 73091

VSA
TE/SS2-KSM : 23/01/2017 : 3P/4C

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