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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Twenty Fourth day of October Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice S.M.SUBRAMANIAM

CMP(MD) No.6206 of 2016
IN
CMA(MD) No.115 of 2016

1 KASIVEERAMANI
2 RANI
3 KANMANI @ KALAISELVI
4 JEYAKUMAR ... PETITIONERS/RESPONDENTS No.1 to 4

Vs

1 THE ORIENTAL INSURANCE COMPANY LIMITED,
REP BY ITS DIVISIONAL MANAGER,
DIVISIONAL MANAGER, TOWN HALL ROAD,
KUMBAKONAM,
KUMBAKONAM TOWN AND MUNSIF ... RESPONDENT/APPELLANT

2 KARTHIKEYAN
3 MANIKANDAN
4 N.C. KAVIYARASAN ... RESPONDENTS/RESPONDENTS No.5 to 7

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to permit the 1st and 2nd Petitioners to withdraw the awarded amount deposited by the 1st Respondent/Appellant to the credit of C.M.A. (MD) No. 115 of 2016 in M.C.O.P.No. 414 of 2011

Prayer in CMA(MD). 115/ 2016 :
To set aside the Award of Rs.4,25,000/- (Rupees Four Laksh Twenty Five Thousand Only) passed in M.C.O.P.No.414/2011 dated 13.08.2015, on the file of the Motor Accidents Claims Tribunal cum III Additional District and Sessions Judge, Thanjavur at pattukottai.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S. M.MARAN, Advocate for the petitioner and of Mr.K.BHASKARAN, Advocate on behalf of the First Respondent, the court made the following order:-

The learned counsel appearing for the petitioners contended that the petitioners are entitled to withdraw 50% of the award amount, which was deposited by the Insurance Company and in order to substantiate his submissions, he has produced a Judgment, dated 30.09.2011 passed in C.M.A.No.3213 of 2004 and the relevant

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paragraph No.21 is extracted hereunder:-

"21.Now the question is whether the Insurance Company can be directed to pay and recover the same from the insured. The Full Bench of this Court has considered the principle of pay and recovery in 2009 (1) CTC 1 (Branch Manager, United India Insurance Company Limitd, Branch Office, Nethaji Bye Pass Road, Dharmapuri Town Vs. Nagammal and 2 others) (cited supra). However the gratuitous passenger in a private car was not considered. The general principle is if there is breach of policy condition the insurer can be directed to pay and later recover from the insured. This principle is based on the judicial discretion that the claimants should not suffer as the liability is an inter se dispute between the insurer and the insured. Though it is not a comprehensive policy to cover the risk of a passenger in a private car, the insured had permitted a gratuitous passenger to travel in his car against the policy conditions. Therefore, there is a breach of policy condition. In that case, the principle of pay and recovery can be applied."

2.The learned counsel appearing for the first respondent/Insurance Company vehemently contended that this Judgment is not applicable to the facts of the present case because the claimant is a passenger in the car, which met with an accident and further, liability policy alone has been paid by the Insurer and therefore, the petitioner cannot be permitted to withdraw the deposited amount. In the event of withdrawal, the Insurance Company will suffer and it may not be possible for the Company to recover the same from the claimants.

3.Considering the facts and circumstances of the case and the balance of convenience, this Court is not inclined to consider the petition filed by the petitioner and accordingly, this petition is dismissed.

sd/-
24/10/2016

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Sub-Assistant Registrar (C.S.)

TO

THE MOTOR ACCIDENT CLAIMS TRIBUNAL CUM
III ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THANJAVUR.

+ 1 CC TO Mr.K.BHASKARAN, ADVOCATE IN SR No. 63014

ORDER IN
CMP(MD) No.6206 of 2016
IN
CMA(MD) No.115 of 2016
Date :24/10/2016

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