BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2016

CORAM

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

C.M.A.(MD).No.226 of 2016
and
CMP(MD)No.6209 and 3020 of 2016

The Branch Manager,
United India Insurance Company Ltd.,
Cumbum,
Theni. ... Appellant/Respondent No.2

Vs.

1.Gunasekaran ... Respondent No.1/Petitioner

2.Jagatheswaran ..Respondent No.2/Respondent No.1

3.Senthilkumar ..Respondent No.3/Respondent No.3

4.The Branch Manager,
New India Assurance Co., Ltd.,
Theni. ..Respondent No.4/Respondent No.4

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.53 of 2012 dated 02.07.2014 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Uthamapalayam.

For Appellant : Mr.A.S.Mathialagan

For 1st Respondent : Mr.G.Vanjinathan

For 4th Respondent : Mr.Y.Prakash

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed to set aside the order passed in M.C.O.P.No.53 of 2012 dated 02.07.2014 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Uthamapalayam.

2.It is a case of injury caused due to the accident took place on 1.5.2011 at about 6.15 p.m near Uthamapalayam - Devaram Main Road. The injured/victim filed a claim petition seeking compensation before the Motor Accident Claims Tribunal (Subordinate Judge), Uthamapalayam. The Tribunal, by considering the facts and circumstances of the case, granted a sum of Rs.3,42,600/- towards total compensation, against which, the appellant/Insurance Company filed the present appeal on the ground that the driver, who was driving the vehicle at the time of accident, was not in possession of valid driving licence and further, he drove the vehicle in drunken condition and hence, the appellant Insurance Company is not liable to pay compensation to the victim and the Insurance Company has to be exonerated from the liability.

3.The exoneration of the Insurance Company on the ground of violation of policy is not permissible in view of the principles laid down by the Hon'ble Supreme Court in the judgment *reported in (2004) 13 SCC 224 in the case of Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, and t*he Tribunal failed to follow the decision of the Hon'ble Supreme Court of India cited supra and therefore, the Tribunal ought to have adopted the pay and recovery method. Hence, this Court is inclined to follow the judgment cited supra and accordingly, pay and recovery method is ordered and in other aspects, the award of the Tribunal passed in M.C.O.P.No.53 of 2012 dated 02.07.2014 by the Motor Accident Claims Tribunal (Subordinate Judge), Uthamapalayam is confirmed.

4.In respect of the liability of the appellant, 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.

5.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. Shri Nanjappan and others, has* 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."*

6.In view of the settled principles both by this Court and the Hon'ble Supreme Court of India, the appellant is directed to pay compensation to the 1st respondent/claimant at the first instance and thereafter, the appellant is at liberty to recover the amount from the 2nd respondent, as per the mode stated in *Nanjappan's* case (supra). The quantum of compensation at Rs.3,42,600/- with interest at 7.5% per annum is just and reasonable.

7.In the result, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

8.The learned counsel for the appellant represents that the entire award amount had already been deposited to the credit of the claim petition before the Tribunal. On such deposit, the first respondent/claimant is permitted to withdraw the entire award amount with proportionate accrued interest and costs through RTGS by filing necessary application before the Tribunal concerned.

Sd/-
Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To
1.The Motor Accident Claims Tribunal,
(Subordinate Judge),
Uthamapalayam.
2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court, Madurai
+One cc to Mr.A.S.Mathialagan, Advocate, SR.No.71184
+One cc to Mr.G.Vanjinathan, Advocate, SR.No.70439
cla
RL/5C/2P/CK/SAR2/2.1.2017 C.M.A.(MD)No.226 of 2016



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