BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1024 of 2013
and
MP(MD)No.1 of 2013

The Branch Manager,
The Oriental Insurance Company Limited,
DDJ Centre, 1st Floor,
Opp. To Vadasery Bus Stand,
Nagercoil. : Appellant/2nd respondent

Vs.

1.Selvam : 1st respondent/Petitioner
2.Senthilkumar : 2nd respondent/1st respondent
[2nd respondent remained exparte before the lower court]

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in MCOP No.55 of 2011, dated 06.11.2012 on the file of the Motor Accidents Claims Tribunal-cum-Subordinate Judge, Valliyoor.

For Appellant : Mr.K.Bhaskaran
For Respondents : No appearance

JUDGMENT

Aggrieved over the award of the Motor Accidents Claims Tribunal (Subordinate Judge), Valliyoor, made in MCOP No.55 of 2011, dated 06.11.2012, this appeal has been preferred by the Insurance company.

2.The first respondent filed the claim petition alleging that on 09.09.2010 at 6.00 p.m., the deceased Thangasamy was travelling as pillion rider in the motor cycle bearing registration No.TN-74-Q-8620 on Aralvoimozhi-Nedumankadu road from east to west. When the rider of the motor cycle negotiating the curve near Chenbagaramanputhur Wooden Bridge, in a high speed, the deceased fell down and sustained multiple injuries all over the body and thereafter, he was admitted at Jeyasekaran Hospital at Nagercoil, where he succumbed to injuries on 11.09.2010. A claim was made for Rs.7,00,000/-.

3.The claim was opposed by the appellant disputing the manner of the accident and their liability to pay the compensation.

4.The Tribunal, upon consideration of the oral and documentary evidence, found that the driver of the vehicle who did not have valid driving licence was responsible for the accident. While awarding compensation of Rs.2,59,200/- together with interest @ 7.5% p.a., the Tribunal directed the Insurance company to pay the amount and thereafter recover from the owner of the vehicle.

5.Though the appellant has assailed the award of the Tribunal on various grounds, Mr.K.Bhaskaran, learned counsel appearing for the Insurance Company would mainly contend that the Tribunal having found that the driver of the Vehicle was not having valid driving license at the time of the accident, erred in directing the appellant to pay the compensation amount and then collect the same from the owner of the vehicle.

6.Heard Mr.K.Bhaskaran, learned counsel appearing for the appellant and perused the materials available on record.

7.In the instant case, as rightly contended by the learned counsel appearing for the appellant, the Insurance company has established before the Tribunal that the driver of the vehicle was not having valid driving licence.

8.It is settled law that though the Insurance Company established violation of the policy condition and in respect of the claim made by the third parties, the Insurance company has to first satisfy the award and recover the same from the owner the vehicle.

9.In the case on hand, the Tribunal after considering the facts and circumstances of the case and also relying upon the decisions of the Hon'ble Apex Court directed the appellant Insurance company to pay the award amount and recover the same from the owner of the vehicle.

10.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 in 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."

11.In such view of the matter, this court does not find any illegality or infirmity in the award passed by the Tribunal. In fine, the appeal is dismissed. The appellant Insurance Company is directed to deposit the entire amount together with interest within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the claimant is permitted to withdraw the entire amount without filing any formal petition before the Tribunal. The Appellant Insurance Company is at liberty to recover the award amount from the insured as per the law laid down by the Hon'ble Supreme Court in **Nanjappan's case [(2004)13 SCC 224]** cited supra. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Valliyoor.

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SH:PV:22.11.2016:4P/2C

Judgment made in
CMA(MD)No.1024 of 2013
21.06.2016