BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)Nos.1116 to 1140 of 2013

C.M.A(MD)No.1116 of 2013

1.S.Yuvaraj	.. Appellant in C.M.A(MD)No.1116 of 2013
2.Reka	.. Appellant in C.M.A(MD)No.1117 of 2013
3.B.Sornam	.. Appellant in C.M.A(MD)No.1118 of 2013
4.K.Kalaiselvi	.. Appellant in C.M.A(MD)No.1119 of 2013
5.S.Subhashini	.. Appellant in C.M.A(MD)No.1120 of 2013
6.N.Alagammal	.. Appellant in C.M.A(MD)No.1121 of 2013
7.V.Arangu	.. Appellant in C.M.A(MD)No.1122 of 2013
8.M.Rakka	.. Appellant in C.M.A(MD)No.1123 of 2013
9.S.Nagarajan	.. Appellant in C.M.A(MD)No.1124 of 2013
10.M.Satya	.. Appellant in C.M.A(MD)No.1125 of 2013
11.P.Sureka	.. Appellant in C.M.A(MD)No.1126 of 2013
12.M.Anitha	.. Appellant in C.M.A(MD)No.1127 of 2013
13.K.Palanivel	.. Appellant in C.M.A(MD)No.1128 of 2013
14.Balasubramaniam	.. Appellant in C.M.A(MD)No.1129 of 2013
15.K.Kaliappan	.. Appellant in C.M.A(MD)No.1130 of 2013
16.M.Umayal	.. Appellant in C.M.A(MD)No.1131 of 2013
17.S.Santha lakshmi	.. Appellant in C.M.A(MD)No.1132 of 2013
18.C.Gunasekar	.. Appellant in C.M.A(MD)No.1133 of 2013
19.M.kalimuthu	.. Appellant in C.M.A(MD)No.1134 of 2013
20.S.P.Subbiah	.. Appellant in C.M.A(MD)No.1135 of 2013
21.K.Kaliammal	.. Appellant in C.M.A(MD)No.1136 of 2013
22.G.Kokila	.. Appellant in C.M.A(MD)No.1137 of 2013
23.M.Chandra	.. Appellant in C.M.A(MD)No.1138 of 2013
24.S.Vasuki	.. Appellant in C.M.A(MD)No.1139 of 2013
25.K.Muthu lakshmi	.. Appellant in C.M.A(MD)No.1140 of 2013

-Vs-

1.V.Govindasamy

2.New India Assurance Company Ltd.,
PPK Complex, 1st Floor,
South Main Street,
Pudukottai District.

3.C.Thangaraj

4.United India Insurance Company Ltd.,
76 V.O.C., Street, 1st Floor,
Karaikudi.
(R1 & R3 Set exparte by the Tribunal. Hence, notice may be given up against R1 & R3)
.. Respondents 1 to 4

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to modify the award passed in M.C.O.P.No.2142,2143,2146,2150,2145,2148,2147,2149,2151,2584,2152, 2442,2611,2613,2614,2615,2616,2629,2612,2639,2585,2610,2640,2641of 2003 dated 30.08.2010 on the file of the Motor Accident Claims Tribunal-cum-III Additional Sub Judge, Trichy.

For Appellant : Mr.N.Sudhagar Nagaraj(in all)

For Respondents : Mr.B.Vijayakarthikeyan (for R2) (in all)
Mr.Royce Immanuel (for R4)(in all)

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COMMON JUDGMENT

The batch of appeals were filed by the claimants, who were injured in the accident took place near Paramanthur on Peravoorani-Meemisal road on 07.06.2003 at 10.20 a.m. It is a head on collision between a lorry and a omni bus and the people travelling in the bus sustained injuries and subsequently, they filed claim petitions before the Motor Accident Claims Tribunal-cum-III Additional Sub Judge, Trichy.

2.The present appeals were filed by the claimants on the ground that the tribunal has erroneously fixed the liability on the owner of the bus and lorry and therefore, the claimants are unable to get any compensation for the injuries sustained by them. Hence, the liability fixed by the tribunal is to be set aside.

3.This Court is not inclined to reconsider the finding of the tribunal that the liability aspect is wrong. Because considering the evidences adduced and considering the manner in which the accident took place, the tribunal has rightly fixed the liability. But the tribunal failed to adopt the principles laid down by the Honourable Supreme Court of India in respect of pay and recovery. The Honourable Supreme Court of India held that the victim should not suffer on account of the fixation of liability and on that ground the Insurance Company should not be exonerated from their liability to pay the compensation to the victim in time.

4.In respect of liability of the Insurance Company, 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. Nanjappan and others***,* has held as follows:-

> *"..... 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."*

6.In view of the settled principles both by this Court and the Hon'ble Supreme Court of India, the order of the Tribunal is modified to the extent that the Insurance company shall pay compensation to the claimants at the first instance and thereafter, the Insurance Company is at liberty to recover the amount from the owners of the vehicles as per the mode stated in *Nanjappan's* case(supra).

7.Therefore, both the insurance companies are directed to deposit the entire award amount with accrued interest and costs within a period of six weeks from the date of receipt of a copy of this order and subsequently, both the Insurance Companies are at liberty to recover the same from the owners of the vehicles as per the liability fixed by the tribunal by following the procedure laid down by the Honourable Supreme Court of India in the case of *Nanjappan and others*. After the deposit, the claimants are permitted to withdraw their respective share as apportioned by the Tribunal, through RTGS, by filing necessary applications before the Tribunal.

With the above-said modification, these Civil Miscellaneous Appeals are disposed of. No costs.

Sd/-
Assistant Registrar(Co)

/True copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
-cum-III Additional Sub Judge, Trichy.

+1 cc to Mr.B.Vijay Karthikeyan , Advocate in SR.No. 67986
+1 cc to Mr.N.Sudhagar Nagaraj , Advocate in SR.No. 69000

skn
AE/SV MMS/21.04.2017/4P/4C

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