



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)No.1164 of 2013

and

M.P(MD)No.1 of 2013

The Divisional Manager,
National Insurance Company,
Anguvilas Building,
North Car Street, Nagercoil.

... Appellant

vs.

1)Rajalingam
2)Jayachandran

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dt:13/12/2012 made in MCOP No.291/2011 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Tirunelveli.

For Appellant: Mr.R.Srinivasan
For R1 : Mr.T.Selvakumaran

JUDGMENT

The present Civil Miscellaneous Appeal has been filed against the judgment and decree dated 13/12/2012 made in MCOP No.291/2011 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Tirunelveli.

2.It is the case of injury caused due to the accident took place on 08.08.2011 at 09.00 p.m near Spia Traders at Puthankudieruppu. The injured victim filed an application in MCOP.No.291 of 2011, before the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Tirunelveli, and the Tribunal by considering the facts and circumstances of the case, awarded Rs.1,62,948/- as total compensation with interest at 7.5% per annum. The appellant insurance company filed the present appeal challenging the Award passed by the Tribunal, on the ground that the Tribunal ought not to have directed the appellant to pay the compensation to the claimant and thereafter, to recover the same from the owner of the vehicle, as the appellant had proved that at the time of accident, the driver of the offending vehicle/Mini



Lorry bearing registration No.TN-38-AD-1152 belonging to the 2nd respondent did not have the badge endorsement in his licence to driver the Heavy Motor Vehicle and therefore, the insurance company ought to have been totally exonerated from the liability. Questioning such order of pay and recovery, the present appeal has been filed by the insurance company.

3.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.

4.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."

5.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.1,62,948/- with interest at 7.5% per annum is just and reasonable.



6. In the result, the Award dated 13/12/2012 made in MCOP No.291/2011 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Tirunelveli, is confirmed in all respects and the present Civil Miscellaneous Appeal is disposed of. No costs. Consequently, M.P(MD)No.1 of 2013 is closed.

7. The appellant is directed to deposit the entire award amount with proportionate accrued interest and costs, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment, if not deposited already. On such deposit, the 1st respondent/claimant is permitted to withdraw the same, by filing necessary application before the Tribunal.

Sd/-
Deputy Registrar(J)

/True copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tirunelveli.

+1cc to M/s.T.Selvakumar, Advocate SR.No.69818/16

Copy to: The Section Officer,
VR Section,
Madurai Bench of Madras High Court Madurai.

nbi

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15.11.2016