

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 23.11.2016****Coram:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****C.M.A(MD)No.1565 of 2013**
and M.P(MD)No.1 of 2013

The Oriental Insurance Company Limited,
Poly Towers 1st Floor,
No.1, Abdul Rajak Street,
Saithapettai,
Chennai.

.. Appellant/2nd Respondent

-Vs-

1.Manikandan @ Ayyappan

.. 1st Respondent/Petitioner

2.Dhalavaisamy

.. 2nd Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order, dated 27.11.2012 made in W.C.No.60 of 2007 by the Deputy Commissioner for Workmen's Compensation, Tiruchirappalli.

For Appellant : Mr.C.Jawahar Ravindran
For R - 1 : Mr.N.Sudhagar Nagaraj

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the order, dated 27.11.2012 made in W.C.No.60 of 2007 by the Deputy Commissioner for Workmen's Compensation, Tiruchirappalli.

2.It is a case where the claim application was filed before the competent authority under the Workmen Compensation Act in W.C.No.60 of 2007 and the competent authority, considering the facts and circumstances of the case and nature of the injuries sustained by the victim, has awarded a sum of Rs.1,68,038/- as total compensation. Challenging the same, the appellant/Oriental Insurance Company has preferred the appeal solely on the ground that the driver, who was driving the vehicle which met with an accident, did not possess any licence at all. In other words, it is a case of no fault liability. Therefore, the appellant/Oriental Insurance Company is not liable to pay any compensation. But the competent authority has erroneously fixed the liability instead of



exonerating the appellant/Oriental Insurance Company.

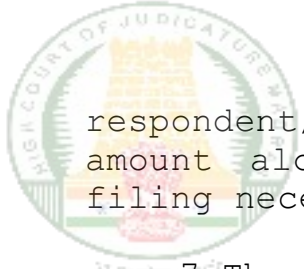
3.Exoneration of liability is not permissible as far as third parties are concerned, in view of the settled principles laid down by the Honourable Supreme Court of India in the case of ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others***, reported in ***I (2004) ACC 524 (SC)***.

4.The competent authority failed to consider the aspect of pay and recovery by adopting the principles laid by the Honourable Supreme Court of India in ***Nanjappan's case*** as cited supra and therefore, this Court is inclined to grant pay and recovery in the case on hand and in ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC), the Hon'ble Supreme Court*** in paragraph 7 it has been held as follows:-

"7..... 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.Accordingly, the award passed by the Deputy Commissioner for Workmen's Compensation, Tiruchirappalli in W.C.No.60 of 2007, dated 27.11.2012 is confirmed.

6.The learned counsel appearing for the appellant/Oriental Insurance Company represented that the entire award amount had already been deposited with accrued interest and costs. The first



respondent/claimant is permitted to withdraw the entire award amount along with accrued interest and costs through RTGS by filing necessary application before the Tribunal.

7. The appellant/Oriental Insurance Company is permitted to recover the award amount from the owner of the vehicle as per the mode incorporated in **Shri Nanjappan's case** referred to above.

8. With the above observation, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

ps

To

The Deputy Commissioner for Workmen's Compensation,
Tiruchirappalli

Copy to:

The section officer VR section,
Madurai Bench of Madras High Court, Madurai.

+1cc to MR.C.JAWAHAR RAVINDHRAN,ADVOCATE, SR NO.72392

+1 CC to MR.N.SUDHAGAR NAGARAJ,ADVOCATE,SR NO.71987

C.M.A (MD) No.1565 of 2013
23.11.2016

MS-SMA/GSV PM/5.1.2017/3P/5C