BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)Nos.171 and 172 of 2013
and
M.P(MD).Nos.2 and 2 of 2013

The National Insurance Co. Ltd.,
Main Road,
Kovilpatti. .. Appellant in both cases/
2nd Respondents in both petitions

-Vs-

D.Selvaraj .. 1st Respondent in CMA.171/2013 /
Petitioner MCOP 365/08

Minor Petchiraja
(rep. by mother
and next friend A.Kala) ..1st Respondent in CMA.172/2013 /
Petitioner in MCOP 173 /09

2.Ananthavalli .. 2nd respondent in both cases /
1st Respondent in both petitions

Common Prayer:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.Nos.365 of 2008 and 173 of 2009, respectively, dated 26.10.2010, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Tuticorin.

For Appellant : Mr.P.Adhimula Pandian
in both cases

For R1 : Mr.S.Siva Thilakar
in both cases

For R2 : Mr.V.A.Dhana Aravindha Balaji
in both cases

JUDGMENT

These are the cases of injury caused due to the accident that took place on 08.11.2007, around 01.30 p.m, near Thoothukudi

Briant Nagar 7th Street, Isakkiamman Kovil Main Road. The injured persons filed applications claiming compensation before the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.II, Tuticorin, and the Tribunal, by considering the facts and circumstances of the case awarded a sum of Rs.77,000/- and Rs.10,000/- respectively, against which, the appellant Insurance Company preferred this appeal, on the ground that these are the case of no valid driving licence and therefore, the Insurance Company ought to have exonerated from the liability and the Tribunal has committed error in fixing the liability on the Insurance Company.

2. Heard the learned counsels on both side and perused the materials available on record.

3. The learned counsel for the appellant contended that these are the cases of no valid driving license, because the driver, who was driving the vehicle, which met with accident did not possess any valid driving licence and the same was proved before the Tribunal and in spite of that the Tribunal failed to order pay and recovery. Therefore the learned counsel for the appellant contended that the appellant insurance company ought to have been exonerated from liability.

4. This Court is not inclined to entertain the contention of the appellant on the ground of exoneration from the liability. In respect of liability of the Insurance Company as far as the third parties/injured are concerned, the Hon'ble Apex Court settled the principle that if 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. Hence, this Court is of the opinion that pay and recovery method is to be ordered and in view of the settled principles by the Hon'ble Supreme Court of India, the appellant is directed to pay compensation to the respondents/claimants at the first instance and thereafter, the appellant is at liberty to recover the amount from the common 2nd respondent, owner of the vehicle, as per the mode stated in ***Nanjappan's*** case(supra). The quantum of compensation at Rs.77,000/- and Rs.10,000/- respectively, is just and reasonable.

7. In the result, the award, dated 26.10.2010, passed in M.C.O.P.Nos.365 of 2008 and 173 of 2009, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Tuticorin, is confirmed.

8. in the result, the present Civil Miscellaneous Appeals are disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

9. The appellant is directed to deposit the entire award amount with proportionate accrued interest and costs, to the credit of M.C.O.P.Nos.365 of 2008 and 173 of 2009, on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Tuticorin, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit, the respondent/claimant in C.M.A.(MD)171 of 2013, is permitted to withdraw his award amount with accrued interest and costs through RTGS, by filing necessary application before the Tribunal concerned. Further, the Tribunal is directed to deposit the awarded amount of the minor respondent in C.M.A.(MD).172 of 2013, in any one of the Nationalised Banks,

in a Fixed Deposit scheme, till he attains majority. The mother and guardian of the minor claimant, is permitted to withdraw the accrued interest of the minor, once in three months directly from the bank, only for the welfare of the minor.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

PJL

To

The Motor Accident Claims Tribunal,
Additional District Court,
Fast Track Court No.II,
Tuticorin.

COPY TO:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.SIVA THILAKAR, Advocate Sr.No. 73787,73788

+1cc to Mr.A.K.BASKARAPANDIYAN, Advocate Sr.No. 73109

+2cc to Mr.J.SENTHIL KUMARAIAH Advocate Sr.No. 73363,73364

JAM/18.01.2017/GSV-SV/ 4p-8c

C.M.A(MD)Nos.171 and 172 of 2013
25.11.2016