



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.No.1806 of 2013

The Branch Manager,
The Oriental Insurance Company Ltd.,
No.307/21,
Iind Floor, Sathiyamoorthy Road,
Pudukottai.

.. Appellant/2nd Respondent
Vs.

1.Kannadhasan
2.A.Murugesan

.. 1st Respondent/Petitioner
.. 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment passed in M.C.O.P.No.2211 of 2009 dated 10.04.2013 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge, Thiruchirappalli.

For Appellant : Mr.C.Jawahar Ravindran

J U D G M E N T

This Civil Miscellaneous Appeal is directed under Section 173 of Motor Vehicles Act, 1988, by the Oriental Insurance Company, as against the award dated 10.04.2013 made in M.C.O.P.No. 2211 of 2009 on the file of the Motor Accident Claims Tribunal-cum-Sub Judge, Thiruchirappalli.

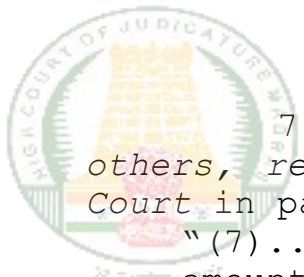
2. Heard both sides and perused the materials available on record.

3. Though the judgment of the Tribunal has been assailed on various grounds, Mr.C.Jawahar Ravindran, learned counsel for the appellant would submit that the Tribunal found the violation of policy condition and permitted him to recover the award amount from the owner of the vehicle. However, decree was not drawn according to the judgment.

4. Heard both sides and perused the records.

5. In paragraph Nos. 5 and 6 of the judgment, the Tribunal held that the appellant is not liable to pay compensation, however, the appellant to pay the award amount and recover the same from the owner of the vehicle. As rightly contended by the learned counsel for the appellant, the decree was not drawn according to the judgment.

6. It is well settled law that the decree has to be drawn in accordance with the judgment and in the case of claim made by the third party, even if there is any violation of the policy condition, the Insurance Company has to pay the award amount to the claimant and thereafter, recover the same from the owner of the vehicle.



7. 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 compensation amount 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 insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. 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 realisation by disposal of the securities to be furnished or from any other property of the insured."

8. In view of the above, the appeal is partly allowed. The compensation awarded by the Tribunal is confirmed and the appellant is directed to pay the award amount to the claimant at the first instance and thereafter, recover the same from the owner of the vehicle as per the mode incorporated in Shri Nanjappan's case referred to above.

9. It is represented by the learned counsel for the appellant that the entire award amount was deposited and the claimant was permitted to withdraw 50% of the award amount. In view of the confirmation of the award amount, the claimant is permitted to withdraw the balance award amount with proportionate interest and costs.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To,

The Motor Accident Claims Tribunal, Subordinate Judge,
Thiruchirappalli.

Copy to: The Section Officer, V.R.Section,

Madurai Bench of Madras High Court, Madurai

+One cc to Mr.N.Sudhagar Nagaraj, ADVocate, SR.No.41288

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