



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2016

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THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.M.A. (MD) .No.1913 of 2013
and
M.P. (MD) No.1 of 2013

The Oriental Insurance Company Limited,
Rep. By its Divisional Manager,
K.J.R Complex,
North Veli Street
Madurai.

.. Appellant/Respondent No.2

Vs.

1.V.Jeyabalan
2.J.Renganayaki

.. Respondent Nos.1 and 2/
Petitioner Nos.1 and 2

3.A.Rahman

.. 3rd respondent/1st respondent

(Third respondent remained exparte
before the lower Court)

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the award passed in M.C.O.P.No.906 of 2011, dated 22.07.2013 on the file of the Motor Accidents Claims Tribunal cum VI Additional District Judge, Madurai.

For Appellant : Mr.K.Bhaskaran

For Respondents : No Appearance

JUDGMENT

This appeal is directed against the award passed by the Motor Accidents Claims Tribunal cum VI Additional District Judge, Madurai in M.C.O.P.No.906 of 2011, dated 22.07.2013.



2. The parents of the deceased, namely Manikandan filed a petition claiming compensation of Rs.15,00,000/- alleging that on 22.02.2010, at about 6.45 p.m., when the deceased was travelling in a car bearing Registration No.TN 63S7958, a cow suddenly crossed the road. At that time, the driver of the car lost control of the vehicle and it had gone to the off-side of the road and hit against a tamarind tree. In that process, the deceased sustained grievous injuries and immediately, he was taken to Tirruppathur Government Hospital, where he succumbed to the injuries on the same day. They alleged that the Driver of the car was responsible for the accident.

3. The appellant/Insurance Company filed a counter refuting the allegations made in the claim petition. They have also disputed the age, income and occupation of the deceased and their liability to pay compensation.

4. In order to prove the case, the claimants examined two witnesses and marked Exs.P1 to P5. On the side of the appellant/Insurance Company, three witnesses were examined and three documents were marked.

5. Upon consideration of both oral and documentary evidences, the Tribunal came to the conclusion that the driver of the car caused the accident and also found that he was not having any valid driving licence, while awarding compensation of Rs.8,65,000/-, the Tribunal directed the appellant/Insurance Company to pay the amount and recover the same from the owner of the vehicle. Aggrieved over the award, the present appeal is filed.

6. Mr.K.Bhaskaran, learned counsel for the appellant would submit that though the appellant has assailed the award on various grounds, the appellant is mainly disputing their liability to pay compensation. It is submitted that when the Tribunal has come to the conclusion that the vehicle was driven by a person, who was not having valid driving licence, the Tribunal ought not to have fastened the liability on the appellant/Insurance Company and therefore, the direction to pay and recover, is liable to be set aside.

7. It is not in dispute that the claimants are third parties. It is settled law that even the Insurance Company established violation of the policy condition and in respect of the claim made by the third parties, the Insurance Company has to first satisfy the award and then recover the same from the owner of the vehicle.

8. In the case on hand, the Tribunal after considering the facts and circumstances of the case directed the appellant/Insurance Company to pay the award amount and recover

the same from the owner of the vehicle.

9. In the Judgment reported in **(2004) 13 SCC 224** in the case of **Oriental Insurance Co. Ltd., Vs. Nanjappan and others**, the Honourable Apex Court made in the following observations:-

" 8. Therefore, while setting aside the Judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. 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."

10. The award of the Tribunal is fair and reasonable, therefore, it is confirmed. In fine, this Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is at liberty to recover the award amount from the insured as per the law laid down by the Hon'ble Supreme Court in **Nanjappan's case** cited supra. No costs. Consequently, connected Miscellaneous Petition is closed.

11. In view of dismissal of this appeal, the appellant/Insurance Company shall deposit the entire award amount with secured interest and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already



deposited. On such deposit being made, the claimants are permitted to withdraw the amount as apportioned by the Tribunal without filing any formal application before the Tribunal.

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Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal cum
VI Additional District Judge, Madurai.

+ 1 CC TO Mr.K.BHASKARAN, ADVOCATE IN SR No. 34465
+ 1 CC TO Mr.C.VAKEESWARAN, ADVOCATE IN SR No. 34815

PM

TE/SS-3/SAR-I : 03/01/2017 : 4P/4C

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