BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.12.2016
CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)No.11 of 2011
and
M.P(MD)No.1 of 2011

The Branch Manager,
Bajaj Allianz General Insurance
Company Ltd.,
G.E.Plaza, Airport Road,
Yerawada, Pune 411 006. ... Appellant/Respondent 2

vs.

1)Sivanantha Perumal Nadar ...Respondent/Petitioner
2)A.Ramajeyam ...Respondent/Respondent-1

Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 21.09.2010 passed in MCOP.No. 233 of 2008 on the file of the Motor Accident Claims Tribunal, (Additional Sub Judge), Tirunelveli.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : No appearance

JUDGMENT

It is the case of injury caused on account of the accident took place on 08.03.2008 around 17.45 hours on Kurumbur main road. The injured filed an application before the Motor Accident Claims Tribunal, (Additional Sub Judge), Tirunelveli, and the Tribunal considering the facts and circumstances of the case, awarded Rs. 67,000/- as total compensation with interest at 7.5% per annum. The present appeal is filed by the appellant/insurance company, challenging the award passed by the Tribunal, on the ground that the driver, who was driving the vehicle which met with the accident was not in possession of the driving licence at all and the fact was proved before the Tribunal. Having found that it is the case of no driving licence, the Tribunal has not followed the principles laid down by the Apex Court.

2.In respect of the liability of the insurance company, 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.

3.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."*

4.In view of the settled principles both by this Court and the Hon'ble Supreme Court of India, the order of the Tribunal is modified to the effect that the appellant shall pay compensation to the respondent/claimant and thereafter recover the same from the owner of the vehicle as per the mode stated in *Nanjappan's* case(supra).  In all other respects, the impugned award is confirmed.

5.The appellant insurance company 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 and thereafter, the respondent/claimant, is permitted to withdraw the same, through RTGS, by filing necessary applications before the Tribunal.

In the result, this Civil Miscellaneous Appeal is disposed of. No costs.  Consequently, M.P(MD)No.1 of 2011 is closed.

Sd/-
Assistant Registrar (CS-I)

/True copy/



Sub Assistant Registrar

To
The Additional Sub Judge,
Motor Accident Claims Tribunal, Tirunelveli.

+1 cc to Mr.S.SRINIVASA RAGHAVAN, Advocate, SR.78705

CMA(MD)No.11 of 2011
01.12.2016

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