**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 29.07.2016**

**CORAM**

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**

**C.M.A(MD) Nos.1952 to 1954 of 2013**
**and MP(MD)Nos.3, 3 and 3 of 2013**

**In C.M.A.(MD) No.1952 of 2013:**
The Oriental Insurance Company,
Tirunelveli,
through its Branch Manager,
Sivasakthi Complex,
S.N.High Road, Sripuram,
Tirunelveli Junction. : Appellant/Respondent No.2

Vs.

1.Yesuvadian : 1st Respondent/Petitioner
2.K.Sumithlal : 2nd Respondent/Respondent No.1

**In C.M.A.(MD) No.1953 of 2013:**
The Oriental Insurance Company,
Tirunelveli,
through its Branch Manager,
Sivasakthi Complex,
S.N.High Road, Sripuram,
Tirunelveli Junction. : Appellant/Respondent No.2

Vs.

1.Joseph Britto : 1st Respondent/Petitioner
2.K.Sumithlal : 2nd Respondent/Respondent No.1

**In C.M.A.(MD) No.1954 of 2013:**
The Oriental Insurance Company,
Tirunelveli,
through its Branch Manager,
Sivasakthi Complex,
S.N.High Road, Sripuram,
Tirunelveli Junction. : Appellant/Respondent No.2

Vs.

1.Daniel : 1st Respondent/Petitioner
2.K.Sumithlal : 2nd Respondent/Respondent No.1

**Prayer in three Appeals:** Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, against the judgement and decree passed in M.C.O.P.Nos.7 of 2011, 9 of 2011 and 10 of 2011 dated 15.06.2012 on the file of the Motor Accident Claims Tribunal Cum Sub Court, Ambasamuthiram.



**In three Appeals:**

For Appellant : Mr.C.Jawahar Ravindran

For 1st Respondent : Mr.K.Kannan

**COMMON JUDGMENT**

Aggrieved over the award passed by Motor Accident Claims Tribunal (Subordinate Judge), Ambasamuthiram, in M.C.O.P. Nos.7 of 2011, 9 of 2011 and 10 of 2011 dated 15.06.2012, the present appeals have been filed.

**2.The facts of the case in brief**:- On 25.09.2009 when the claimants were travelling from Ambasamudram to Vikiramasingapuram in an auto bearing Registration No.TN-72-X6877, Omni Van bearing Registration No. TN-04 Z 5656 came in a rash and negligent manner, near Anbusamuthira Mahal, hit against the auto and thereby the claimants sustained injuries. The Claim Petitions were laid by the driver of the auto for Rs.5,00,000/- and other two claimants for Rs.2,00,000/- each alleging that the driver of the Omni Van was responsible for the accident.

**3.**The claim was resisted by the appellant Insurance company contending that the driver of the Omni Van was not having valid driving licence on the date of the accident.

**4.**Before the Tribunal, the claimants examined themselves as P.W.1 to P.W.3 and one Prema Rani was examined as P.W.4 and marked documents Ex.P1 to P23. On the side of the Appellant Insurance company, RW1 was examined and marked Exs.R1 to R4.

**5.**Upon consideration of the oral and documentary evidence, the tribunal held that the driver of the Omni Van was responsible for the accident and awarded compensation of Rs.,10,000/-, Rs.2,49,000/- and Rs.67,000/- respectively along with interest at the rate of 7.5% p.a., directing the appellant Insurance company first to satisfy the award amount and thereafter, recover from the owner of the vehicle. Challenging the said award, the present appeals have been filed.

**6.**Heard Mr.C.Jawahar Ravindaran, the learned counsel appearing for the petitioner and Mr.K.Kannan, the learned counsel appearing for the 1st respondent and perused the materials available on record.

**7.**The learned counsel appearing for the appellant has mainly contended that the Insurance company had proved that the driver of the Omni Van did not have any valid licence at all on the date of the accident and that the tribunal having accepted the above fact has wrongly fastened the liability on the Insurance company. It is further submitted that the award of the tribunal is on the higher side.

**8**.The Tribunal has awarded Rs.,10,000/-, Rs.2,49,000/- and Rs.67,000/- respectively to the claimants. In my considered view, the quantum awarded by the Tribunal is fair and reasonable and the same can be confirmed.

**9**. The Tribunal having found that the driver did not have any valid license on the date of the accident directed the appellant Insurance Company to pay the compensation and thereafter recover from the owner of vehicle.

**10**.It is settled law that though 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 recovery the same from the owner the vehicle.

**11**.In ***(2004)13 SCC 224, Oriental Insurance Co. Ltd., vs. Nanjappan and others***, the Hon'ble Apex Court made 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."*

**12.** In such view of the matter, this court does not find any illegality or infirmity in the award passed by the Tribunal. In fine, the appeals are 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 Petitions are closed.

**Sd/-**
**Assistant Registrar(CS-II)**

**/True copy/**

**Sub Assistant Registrar**

To

The Motor Accident Claims Tribunal/Subordinate Judge,
Ambasamuthiram.

+1 cc to M/s.C.Jawahar Ravindran, Advocate in SR.No.40806
CM
CSL/KBM/31.08.2016 :4P/3C

**Judgment made in**
**<u>C.M.A(MD) Nos.1952 to 1954 of 2013</u>**
**<u>and MP(MD)Nos.3, 3 and 3 of 2013</u>**
**29.07.2016**