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.1969 of 2013
and
M.P.(MD)No.2 of 2013

The Branch Manager,
The Oriental Insurance Company Limited,
South Street,
Thanjavur Town & Munsif. ... Appellant/2nd Respondent

Vs.

1. Divyaseelan .. 1st Respondent/Petitioner

2. Ravi ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment made in M.C.O.P.No.269 of 2011, dated 04.10.2012, on the file of the Motor Accident Claims Tribunal cum Additional District & Sessions Judge,Special Court Under Essential Commodities Act, Thanjavur.

For Appellant : Mr.K.Bhaskaran
For R1 & R2 : No appearance

J U D G M E N T

Challenging the award passed by the Motor Accidents Claims Tribunal, Additional District & Sessions Judge, Thanjavur passed in M.C.O.P.No.269 of 2011, the Insurance Company has preferred this Civil Miscellaneous Appeal.

2. Heard the learned counsel for the appellant and perused the materials available on record.

3. M.C.O.P.No.269 of 2011 was filed by the first respondent claiming compensation of Rs.3,00,000/- for the injuries sustained by him in the accident occurred on 24.12.2009. According to the claimant, on the date of the accident, at 08.00 a.m., he was proceeding by the foot on Thanjavur - Kumbakonam main road. At that time, a motorcycle bearing Registration No.TN-68-6976 came in a rash and negligent manner and dashed against him. In that impact, he sustained injuries. He was immediately taken to the Thanjavur Medical College Hospital, where he took treatment as inpatient till 25.01.2010. It is alleged that the rider of the motorcycle caused the accident.

4. The appellant Insurance Company opposed the claim by filing counter affidavit, disputing the manner of the accident and their liability. It is further contended that the rider of the motorcycle was not having a valid driving licence at the time of accident and therefore, they are not liable to pay compensation.

5. The claimant examined himself as P.W.1 and narrated the manner of the accident in his evidence. P.W.1 has marked Ex.P.1 – First Information Report; Ex.P.4 – report of the Motor Vehicle Inspector; Ex.P.6 – Accident Registrar. On the side of the Insurance Company, R.W.1 and R.W.2 were examined.

6. The Tribunal, upon consideration of the oral and documentary evidences, in my view, has rightly came to the conclusion that the rider of the motorcycle was responsible for the accident.

7. R.W.1 and R.W.2 have deposed that the rider of the motorcycle was not having any valid driving licence at the time of the accident. The judgment passed in the criminal Court would reveal that the rider of the motorcycle accepted the charges that he drove the motorcycle without valid driving licence and paid the fine amount. Further, Ex.P.4- the report of the Motor Vehicle Inspector would also corroborate the case of the Insurance Company. The evidence of R.W.1 and R.W.2 supports the case of the Insurance Company. The Tribunal, after analysing both oral and documentary evidences, in paragraph Nos.7 and 8 of the judgment, has come to the conclusion that the rider of the motorcycle was not having any valid driving licence at the time of the accident, however, fastened the liability on the Insurance Company by holding that the claimant is the third party.

8. Since this Civil Miscellaneous Appeal is filed questioning the liability, this Court need not advert into other aspects. The appellant – Insurance Company has accepted the quantum awarded by the Tribunal.

9. The learned Counsel for the appellant would submit that the Tribunal, having been found that the driver of the motorcycle was not having any valid and effective driving licence at the time of accident, is erred in fixing the liability on the Insurance Company.

10. It is not in dispute that the claimant is a third party. It is settled law that even in the case of violation of policy condition, the Insurance Company is liable to pay compensation to the claimant and thereafter recover from the owner of the vehicle, as per the judgment reported in **(2004)13 SCC 224** in the case of **Oriental Insurance Co. Ltd., vs. Nanjappan and others**, in which 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."

11.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 appeal is dismissed. The Appellant Insurance Company is directed to pay the compensation amount within a period of eight weeks from the date of receipt of a copy of this order, if it is not already deposited and the 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.

Sd/-
Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To,
The Motor Accident Claims Tribunal
cum Additional District & Sessions Judge,
Special Judge, under the Essential Commodities Act,
Thanjavur.

+1cc to M/s.K.Bhaskaran, Advocate SR.NO.34467/16

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