BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.2000 of 2013
and
M.P(MD)No.3 of 2013

The Divisional Manager,
National Insurance Company Limited,
Divisional Office,
Anguvilas Building,
North Car Street, Nagercoil - 629 001,
Agasteeswaram Taluk,
Kanyakumari District. .. Appellant/3rd Respondent

-Vs-

1.Rejikumar .. 1st Respondent/Petitioner

2.Essac .. 2nd Respondent/1st Respondent

3.The Correspondent,
Sree Ramakrishna Matriculation
Higher Secondary School,
Paraicodu, Mulagumoodu Post,
Thiruvithamcode Village,
Kalkulam Taluk,
Kanyakumari District. .. 3rd Respondent/2nd Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 19.10.2012 made in M.C.O.P.No.76 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Padmanabhapuram.

For Appellant : Mr.J.S.Murali
For R - 1 : Mr.C.Kishore
For RR 2 & 3 : Mr.A.George Stephen

JUDGMENT

At the outset, Mr.J.S.Murali, learned counsel appearing for the appellant/Insurance Company contended that the Motor Accident Claims Tribunal/Subordinate Judge, Padmanabhapuram, in its Judgment and Decree, dated 19.10.2012 awarded a compensation of Rs.2,87,120/- to the claimant. As against the said award, the present appeal is filed.

2.The contention of the learned counsel for the appellant is that the appellant is questioning the quantum only to a limited extent of Rs.20,000/- awarded for grievous injuries. The ground of challenge is that the Tribunal has already awarded Rs.60,000/- towards 30% disability caused to the claimant. Therefore, the claimant is not entitled for the additional amount of Rs.20,000/- as awarded by the Tribunal for grievous injuries.

3.The learned counsel for the first respondent/claimant has no objection on this aspect and therefore, the amount of Rs.20,000/- awarded for grievous injuries by the Tribunal is to be set aside.

4.The learned counsel for the appellant further states that the vehicle insured with the appellant did not have the fitness certificate which was not available. In the absence of the fitness certificate of the vehicle insured with the appellant, the Tribunal ought not to have exonerated the owner from paying the compensation amount, instead of doing so, the Tribunal has directed the Insurance Company to pay the compensation and then to recover the amount.

5.The learned counsel for the first respondent contended that during the course of cross-examination, witness R.W.2 deposed that he was not aware of the fact regarding the fitness certificate is prior to 25.02.2010.

6.In the absence of production of valid fitness certificate, this Court need not consider the authenticity of the same.

7.The learned counsel for the appellant states that the accident caused by the vehicle, was not possessing a valid fitness certificate and therefore, the Insurance Company is not liable to pay any compensation to the claimant.

8.Though the appeal has been preferred assailing the award of the Tribunal on various grounds, the learned counsel for the appellant contended that since the appellant found that the vehicle insured with the appellant/Insurance Company did not have the fitness certificate, which is in violation of the policy condition, the liability cannot fastened on the Insurance Company.

9.Indisputably, the claimant is a third party. It is settled law that 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.

10.On this aspect, in the judgment reported in **(2004)13 SCC 224** in the case of **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."

11.In the case on hand, the Tribunal awarded a sum of Rs.2,87,130/- together with interest at the rate of 7.5% p.a. Out of which, the appellant/Insurance Company is disputing the amount of Rs.20,000/- awarded for grievous injuries.

12.Considering the facts and circumstances of the case, the Civil Miscellaneous Appeal is partly allowed and the amount of Rs.20,000/- awarded by the Tribunal for sustaining grievous injuries is set aside and accordingly, the balance award amount of Rs.2,67,130/- is confirmed. In respect of all other claims, the appeal is dismissed.

13.The appellant/Insurance Company is directed to deposit the entire award amount, less the amount already deposited with accrued interests and costs to the credit of M.C.O.P.No.76 of 2010 on the file of the Motor Accident Claims Tribunal, Padmanabhapuram, within a period of four weeks from the date of receipt of a copy of this order and then to recover the same from the owner of the vehicle by filing appropriate proceedings before the Executing Court. The claimant is permitted to withdraw the said amount by making necessary applications before the Tribunal.

14.It is further clarified that anticipated future medical expenses awarded by the Tribunal shall not carry any interest and the fixed amount of Rs.20,000/- for future medical expenses is confirmed which shall not carry any interest. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(co)

/True copy/

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal,
Subordinate Judge,
Padmanabhapuram.

+1cc to Mr.S.Kishore, Advocate SR.No.65417
+1cc to Mr.J.S.Murali, Advocate SR.no.65259

Copy to:The Record Keeper,
VR Section,
Madurai Bench of Madras High Court, Madurai

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