



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2016

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1245 of 2011

and

M.P.(MD) No.2 of 2011

M/s.United India Insurance Company Limited,
Branch Office - 1,
Trichirappalli - 620 008

.. Appellant/Respondent No.2

Vs.

1.Mr.G.Ilaiyaraja
2.R.Sundarraaj

..Respondent No.1/Petitioner
..Respondent No.2/Respondent No.1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment passed in M.C.O.P.NO.1707 of 2005 dated 31.01.2011 on the file of the Motor Accident Claims Tribunal, I Additional Subordinate Judge, Trichy.

For Appellant : Mr.C.Jawahar Ravindran
For R1 : M/s.M.Maria Vinola for
Mr.K.Govindarajan

J U D G M E N T

It is a case of injury and the accident took place on 08.04.2005 and the claimant sustained fractures and grievous injuries all over the body including hands. The Claim Petition was filed by the claimant before Motor Accident Claims Tribunal/I Additional Sub Judge, Trichy, in M.C.O.P.NO.1707 of 2005.

2. The Tribunal, considering the facts and circumstances of the case, awarded total compensation of Rs.1,45,000/-, against which, the Insurance Company preferred the present appeal mainly on the ground that the driver, who was driving the vehicle at the time of accident, was not in possession of any license and therefore, the appellant Insurance Company is to be exonerated from liability.

3. This Court considered the submissions of the learned counsel for the appellant and the learned counsel appearing for the first respondent and perused the materials available on record.

4. Considering the facts and circumstances of the case, <https://hdservices.ecourts.gov.in/hdservices/> of the view that the Tribunal have passed an order of pay and recovery. There is no error or infirmity in the order passed by the Tribunal.



5. It is settled position of law that in the case of claim made by the third party, even if there is any violation of the policy conditions, the Insurance Company has to pay the award amount to the claimant and thereafter, recover the same from the owner of the vehicle.

6. In *Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others*, reported in I (2004) ACC 524 (SC), the Hon'ble Supreme Court in paragraph 7 has held as follows:-

"(7)For the purpose of recovering the compensation amount 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 insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. 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 realisation by disposal of the securities to be furnished or from any other property of the insured."

7. In view of the above, the award of the Tribunal passed dated 31.01.2011 in M.C.O.P.NO.1707 of 2005 is confirmed.

8. The learned counsel for the appellant represents that the 50% award amount has been deposited. The Insurance Company is directed to deposit the balance 50% within a period of four weeks from the date of receipt of copy of this order. The respondent/claimant is permitted to withdraw the award amount with accrued interest by filing necessary permission petition less the amount already withdrawn.

9. The Insurance Company is permitted to recover the award amount from the owner of the vehicle as per the mode incorporated in Shri Nanjappan's case referred to above.

10. With the above observation, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition in M.P.(MD) No.2 of 2011 is also closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/



To,
The I Additional Sub Judge,
The Motor Accident Claims Tribunal,
Trichy.

WEB COPY

Copy to : The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.K.Govindarajan, Advocate in SR.68549

+1cc to M/s.C.Jawahar Ravindran, Advocate in SR.68255

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cm.

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