BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.143 of 2011
and
M.P(MD)No.1 of 2011

The Oriental Insurance Company Limited,
Rep. By its Divisional Manager,
No.108, T.P.K.Road, II Floor,
Madurai - 625 001. .. Appellant/2nd Respondent

-Vs-

1.Gnana Sundari .. 1st Respondent/Petitioner

2.Thilagavathi .. 2nd Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 06.08.2010 made in M.C.O.P.No.26 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tirunelveli.

For Appellant : Mr.P.Ramani
For R - 1 : Mr.M.P.Senthil

JUDGMENT

The Civil Miscellaneous Appeal has been preferred against the Judgment and Decree, dated 06.08.2010 made in M.C.O.P.No.26 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tirunelveli.

2.It is a case of an injury occurred due to the accident, which took place on 27.10.2007 at 18.45 hours, in Natham Road, DRO Colony bus stop, Madurai. The injured victim filed an application before the Motor Accidents Claims Tribunal, Principal Sub Court, Tirunelveli and the Tribunal, after considering the facts and circumstances of the case, awarded a sum of Rs.1,13,500/- towards total compensation. Challenging the same, the appellant/Oriental Insurance Company Limited has preferred the present appeal on the ground that the driver, who was driving the vehicle, was only in possession of a learner's licence and not having a valid driving licence and therefore, the appellant/Oriental Insurance Company is not liable to pay compensation and the appellant/Oriental Insurance Company is to be exonerated from the liability.

3.Exoneration of liability is not permissible as far as third parties are concerned, in view of the settled principles laid down by the Honourable Supreme Court of India in the case of ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others,*** reported in ***I (2004) ACC 524 (SC).***

4.The Tribunal failed to consider the aspect of pay and recovery by adopting the principles laid by the Honourable Supreme Court of India in ***Nanjappan's case*** as cited supra and therefore, this Court is inclined to grant pay and recovery in the case on hand and in ***Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC), the Hon'ble Supreme Court*** in paragraph 8 it has been held as follows:-

> "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."

5.Accordingly, the award passed by the Motor Accident Claims Tribunal, Principal Sub Court, Tirunelveli, in M.C.O.P.No.26 of 2008, dated 06.08.2010 is confirmed.

6.The learned counsel appearing for the appellant/Oriental Insurance Company represented that the entire award amount had already been deposited with accrued interest and costs. The first respondent/claimant is permitted to withdraw the entire award amount along with accrued interest and costs through RTGS by filing necessary application before the Tribunal.

7.The appellant/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.

8.With the above observation, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar ((T&P)

/True copy/

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal,
Principal Subordinate Judge, Tirunelveli.

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

+2 CC to Mr.P.RAMANI, Advocate, SR No.71820 & 70818

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ps
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