



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.1448 of 2011

and

M.P(MD)No.4 of 2011

The Divisional Manager,
M/s.Oriental Insurance Company Limited,
16, North Veli Street,
Madurai - 1.

.. Appellant/2nd Respondent

-Vs-

1.C.Selvam @ Selvaraj

.. 1st Respondent/1st Petitioner

2.V.M.N.Muthaiah Nadar & Sons,
Through its Partner,
No.32, Amman Sannathi Street,
Madurai - 1.

.. 2nd Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 30.11.2009 made in M.C.O.P.No.735 of 2004 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Madurai.

For Appellant : Mr.C.Ramachandran

JUDGMENT

The Civil Miscellaneous Appeal has been preferred against the Judgment and Decree, dated 30.11.2009 made in M.C.O.P.No.735 of 2004 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Madurai.

2.It is a case of an injury, which occurred on account of the accident took place on 14.07.2002 at 01.45 p.m., at Thatchanallur Bye-pass road near Railway bridge.

3.The injured victim filed an application seeking compensation before the Motor Accident Claims Tribunal, II Additional Sub Court, Madurai in M.C.O.P.No.735 of 2004 and the Tribunal, considering the facts and circumstances of the case, awarded a sum of Rs.1,15,075/- towards total compensation. Against which, the



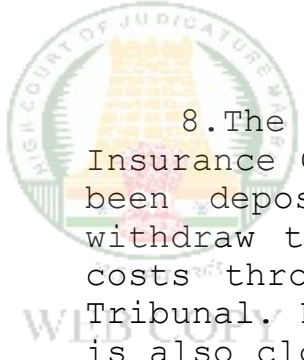
appellant/Oriental Insurance Company has preferred an appeal challenging the award on the ground that the first respondent/claimant travelled in a mini door van bearing Registration No.TN-59-S-2034 belonging to the second respondent from Madurai to Tirunelveli. As the mini door van was driven by one Pitchai in a rash and negligent manner, which resulted accident and the injured sustained multiple injuries.

4.The contention of the learned counsel for the appellant/Oriental Insurance Company is that there is no policy coverage for the spare driver and the Tribunal has erred in fixing the liability on the side of the appellant/Oriental Insurance Company. The appellant/Oriental Insurance Company was able to prove that the injured was a spare driver and not covered with the policy and hence, the appellant/Oriental Insurance Company has to be exonerated from liability and the Tribunal committed an error in ordering for pay and recovery.

5.This Court is not able to accept the contention raised by the appellant/Oriental Insurance Company. It is an admitted fact that the spare driver was travelling in the van and therefore, compensation in respect of the third party victims cannot be denied. The Tribunal rightly applied the principles, as settled down by the Honourable Supreme Court of India in the case of ***Oriental Insurance Co. Ltd., vs. Nanjappan and others*** reported in ***(2004)13 SCC 224*** by ordering pay and recovery. Hence, this Court is not inclined to intervene with the findings of the award passed by the Tribunal and the pay and recovery ordered by the Tribunal is in accordance with law as settled by the Honourable Supreme Court of India in the case of ***Oriental Insurance Co. Ltd., vs. Nanjappan and others*** reported in ***(2004)13 SCC 224***.

6.Though the learned counsel for the appellant/Oriental Insurance Company argued that there is no coverage for the spare driver, the learned counsel for the appellant/Oriental Insurance Company fairly stated that R.W.1-an officer from the appellant/Oriental Insurance Company filed Ex.R.1, which is the Insurance policy. According to the policy, apart from the driver six loadmen coverage was found available with an extra premium at the rate of Rs.15 per loadman and therefore, the policy coverage was given for a driver along with six other persons travelled in the mini door van.

7.Such being the position, this Court is not inclined to intervene with the findings of the award fixing the liability on the side of the appellant/Oriental Insurance Company, which was rightly done. Accordingly, the award passed by the Tribunal, dated 30.11.2009 in M.C.O.P.No.735 of 2004 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Madurai is confirmed and the Civil Miscellaneous Appeal is dismissed.



8. The learned counsel appearing for the appellant/Oriental Insurance Company represented that entire award amount had already been deposited. 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. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
II Additional Sub Court,
Madurai.

COPY TO: The Section officer, VR section,
Madurai Bench of Madras Highcourt,
Madurai.

+1cc to Mr. C.Ramachandran.
Advocate in SR 70951

ps
CSL/SKS-RR/10.01.2017/3P-4C

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