BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.576 of 2013
and
M.P.(MD) No.1 of 2013

M/s.The Oriental Insurance Co., Ltd.,
Represented by its Divisional Manager,
North Cotton Road,
Tuticorin. .. Appellant/2nd Respondent

-Vs-

1.Andal .. Respondent No.1/Petitioner No.1
2.Minor Lavanya .. Respondent No.2/Petitioner No.2
3.Minor Deivanai .. Respondent No.3/Petitioner No.3
4.Jeyanthi .. Respondent No.4/Respondent No.1
5.Bathirakali .. Respondent No.5/Respondent No.3

(Minors 2 & 3 represented
by their mother and guardian
Tmt.Andal)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside or modify the order of the Tribunal made on 02.09.2010 in MCOP No.698 of 2009 on the file of the Motor Accidents Claims Tribunal/Additional District Judge, Fast Track Court No.2, Tirunelveli and allow the appeal with costs.

For Appellant : Mr.C.Jawahar Ravindran
For R4 : Mr.S.Pon Senthil Kumar

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JUDGMENT

The appellant/Oriental Insurance Company Ltd., filed the present C.M.A.No.576 of 2013, challenging the award passed in M.C.O.P.No.698 of 2009 by the Motor Accidents Claims Tribunal/Additional District Judge, Fast Track Court No.2, Tirunelveli.

2.It is an unfortunate case of fatal accident took place on 18.04.2009 at about 12.15 p.m on the Tiruchendur T.B. Road near Balaji lodge. The heirs of the deceased filed the application for compensation before the Motor Accidents Claims Tribunal/Additional

District Judge, Fast Track Court No.2, Tirunelveli in M.C.O.P.No.698 of 2009 and the Tribunal, considering facts and circumstances of the case, awarded Rs.6,10,000/- as total compensation to the respondents/victims.

3.The sole ground raised by the appellant/Insurance company is that it is a case of no driving license, which was established by them before Tribunal, and in spite of that the Tribunal ordered pay and recovery instead of totally exonerating the Insurance Company from its liability to pay compensation.

4.In respect of the liability of the Insurance Company, this Court and the Hon'ble Apex Court settled the principle that when the claimant is a third party, even there is any violation of policy conditions, 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.

5.On the aspect of mode of recovery available to the insurer, the Hon'ble Supreme Court in the judgment reported in **(2004)13 SCC 224** in the case *of* **Oriental Insurance Co. Ltd., vs. Nanjappan and others***,* has held as follows:-

> *“..... 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.”*

6.In view of the settled principles both by this Court and the Hon'ble Supreme Court of India, the award of the Tribunal ordering pay and recovery is confirmed and the appellant/Insurance company shall pay compensation to the respondents 1 to 3 & 5/claimants at the first instance and thereafter, the appellant is at liberty to recover the amount from the owner of the vehicle as per the mode stated in *Nanjappan's* case(supra).

7. It is represented by the appellant/Insurance Company that the entire award amount has already been deposited. Therefore, the respondents 1 to 3/claimants and R-5/R-3 are entitled to withdraw their shares as apportioned by the Tribunal, through RTGS, by filing necessary applications before the Tribunal. As far as the shares of the minors are concerned, the Tribunal is directed to deposit their entire share amount in Fixed Deposit, in any one of the nationalized banks, initially for a period of three years, renewable thereafter, till they attain majority and the first respondent/mother of the 2nd and 3rd respondents is permitted to withdraw interest from the said deposit once in three months, directly from the bank.

In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge,
The Motor Accident Claims Tribunal,
FTC No.2, Tirunelveli.

+1cc to Mr.C.Jawahar Ravindran Advocate in SR. NO.68262
SKN
JS/JC/SAR.1/24.7.2017/3P-3C

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