BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.(MD).No.749 of 2013 &
M.P.(MD).No.1 of 2013

The Branch Manager,
Oriental Insurance Company Ltd.,
Kumbakonam. .. Appellant/Respondent No.2

Vs.

1.Rajendran .. Respondent No.1/Petitioner
2.Govindarasu .. Respondent No.2/Respondent No.1

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the judgment and decree passed in MCOP No.261/2010, dated 12.04.2012, on the file of the Motor Accident Claims Tribunal cum Additional Sub Court, Kumbakonam.

For Appellant : Mr.C.Jawahar Ravidnran
For Respondent :Mr.A.Saravanan for R1

JUDGMENT

The accident took place on 20.03.2009 at about 7 p.m. at Aaduthurai to Thirumangalam Road. The claimant sustained grievous injuries and filed a petition for compensation before the Motor Accident Claims Tribunal, Kumbakonam, in MCOP No.261 of 2010 and the Tribunal after considering the facts and circumstances of the case, awarded a sum of Rs.93,330/- as total compensation.

2. The learned counsel appearing for the appellant contended that it is a case of pay and recovery and the principle was not considered by the Tribunal, despite the fact that the insurance company has examined its witnesses showing that the driver who was driving the vehicle, which met with the accident, did not possess a valid driving license.

3. The learned counsel appearing for the respondent claimant has no serious objection with regard to the adopting of the principle of pay and recovery.

4. In view of the facts and circumstances of the case, this Court is inclined to follow the principles laid down by the Hon'ble Supreme Court 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 it has been 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."

5. In view of the above, the award of the Tribunal passed in M.C.O.P.NO.261 of 2010 dated 12.04.2012 is confirmed.

6. The learned counsel for the appellant represents that the entire award amount has been deposited. The first respondent/claimant is permitted to withdraw the award amount with accrued interest by filing necessary permission petition.

7. 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.

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

Sd/-
Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To
The Motor Accident Claims Tribunal/Additional Subordinate Judge,
Kumbakonam.
+One cc to Mr.C.Jawahar Ravindran, Advocate, SR.No.68763
+One cc to Mr.A.Saravanan, Advocate, SR.No.68972
jikr
RL/4C/2P/PV/SARI/12.12.2016

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M.P.(MD).No.1 of 2013
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