BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.12.2016

CORAM :
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)No.239 of 2011
and
M.P(MD)No.2 of 2011

The Branch Manager,
National Insurance Co.Ltd.,
Sivakasi. ... Appellant/2nd Respondent

vs.

1)Ayyammal
2)Deivanai
3)Muthammal ..1st to 3rd Respondents/Petitioners
4)P.Baskaran ..4th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 29.04.2008 passed in MCOP.No.105 of 2004 on the file of the Motor Accident Claims Tribunal, (Sub Court), Sivakasi.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 & R2 : Mr.M.Micheal Bharathi
For R4 : Mr.S.Venkatasubramanian
For R3 : Dismissed vide court order dt: 22/3/2013

JUDGMENT

It is the case of unfortunate fatal accident took place on 11.05.2004 around 11.15 a.m on Sattur to Kovilpatti main road. The legal heirs of the deceased filed an application before the Motor Accident Claims Tribunal, (Sub Court), Sivakasi, and the Tribunal considering the facts and circumstances of the case, awarded Rs.1,83,600/- as total compensation with interest at 7.5% per annum. The present appeal is filed by the appellant/insurance company, challenging the award passed by the Tribunal, on the ground that the driver, who was driving the vehicle, which met with the accident was not in possession of a valid driving licence and in fact, there was no valid badge endorsement at the time of driving the vehicle.

2.The above fact was not disputed before the Tribunal, either by producing the driving licence or through any other document. In the absence of production of valid driving licence, the contention of the appellant insurance company that there was no valid badge endorsement, is to be considered and the Tribunal also found that there was no valid badge endorsement. Such being the position, the

Tribunal ought to have ordered pay and recovery by following the principles laid down by the Hon'ble Supreme Court.

3.In respect of the liability of the insurance company, this Court and the Hon'ble Apex Court settled the principle that the claimant is a third party and even if there is any violation of policy condition, 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.

4.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.*"

5.In view of the settled principles both by this Court and the Hon'ble Supreme Court of India, the order of the Tribunal is modified to the effect that the appellant shall pay compensation to the respondents/claimants and thereafter recover the same from the owner of the vehicle as per the mode stated in *Nanjappan's* case (supra). In all other respects, the impugned award is confirmed.

6.The appellant insurance company is directed to deposit the entire award amount with proportionate accrued interest and costs, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment, if not deposited already and thereafter, the respondent/claimant, is permitted to withdraw the same, through RTGS, by filing necessary applications before the Tribunal.

In the result, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, M.P(MD)No.2 of 2011 is closed.

Sd/-
Assistant Registrar[CS II]

/True copy/

Sub Assistant Registrar

nbi
To

The Subordinate Judge,
Motor Accident Claims Tribunal, Sivakasi.

Copy to: The Section Officer, VR SECTION
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

1CC TO MR. S. SRINIVASA RAGHAVAN, ADVOCATE SR:78709

AM SS 2 3P 4C

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