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

The Oriental Insurance Company Limited,
Door No.24-E, 12-A,
Sivasakthi Shopping complex,
S.N.High Road,
Tirunelveli - 627 001,
Through its Branch Manager. .. Appellant/2nd Respondent

-Vs-

1.Gomathi .. Respondent No.1/Petitioner No.1
2.Suresh @ Balasubramanian .. Respondent No.2/Petitioner No.2
3.Karthikeyan .. Respondent No.3/Petitioner No.3
4.Gayathri .. Respondent No.4/Petitioner No.4
5.Priya @ Pathmavathy .. Respondent No.5/Petitioner No.5
6.Alaguparvathi .. Respondent No.6/Petitioner No.6
7.Lenin .. Respondent No.7/Petitioner No.7

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Tribunal of MACT cum II Additional District Judge, Tirunelveli made in MCOP.No.79/2009 dated 19/10/2010.

For Appellant : Mr.C.Jawahar Ravindran
For 1st Respondent : No Appearance

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JUDGMENT

The appellant/National Insurance Company Ltd., filed the present C.M.A.No.814 of 2013, challenging the award passed in M.C.O.P.No.79 of 2009 by the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Tirunelveli.

2.The present case on hand is a fatal accident took place on 04.12.2008. The heirs of the deceased filed the application for compensation before the Motor Accidents Claims Tribunal-cum- II Additional District Judge Tirunelveli in M.C.O.P.No.79 of 2009 and the Tribunal, considering facts and circumstances of the case, awarded Rs.5,40,500/- as total compensation to the respondents/victims.

3.The present appeal is filed by the appellant/Insurance Company solely on the ground that it is a case of no license and further the tribunal considered the principles of pay and recovery. In spite of that the tribunal has not exonerated the appellant/insurance company from liability.

4.Such a ground raised by the appellant/Insurance Company cannot be accepted in view of the principles laid down by the Honourable Supreme Court of India in the case reported in **(2004)13 SCC 224 (Oriental Insurance Co. Ltd., vs. Nanjappan and others)** and the tribunal has rightly ordered pay and recovery and hence, there is no infirmity in the award.

5.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.

6.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."

7.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 extent that the appellant/Insurance company shall pay compensation to the respondents/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).

8. It is represented by the appellant / Insurance Company that the entire award amount has already been deposited. Therefore, the respondents/claimants are entitled withdraw their shares as apportioned by the Tribunal, through RTGS, by filing necessary applications before the Tribunal.

9.In view of the above, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

II Additional District Judge,
The Motor Accident Claims Tribunal-cum-
Tirunelveli.

Copy to

The Record Keeper,
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Madurai Bench of Madras High Court,
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+1cc to Mr.V.Sasi Kumar, Advocate Sr.No.68028
+1cc to Mr.C.Jawahar Ravindran, Advocate Sr.No.68257

SKN
VB/SV/MMS/SAR2/13.04.2017/3P/5C