



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2016

CORAM

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THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.M.A(MD) No.854 of 2013
and
MP (MD) No.1 of 2013

The Oriental Insurance Company Ltd.,
Divisional Office,
No.6-A, North Cotton Road,
Tuticorin.

: Appellant/2nd respondent

Vs.

1. Shanmugakani
2. Bharat Kumar

: R1 and R2/Petitioners 1 and 2

3. M/s. Lotus Marine Services,
No.39, Emperor Street,
Tuticorin.

[3rd respondent remained

exparte before the lower court]

: 3rd respondent/1st respondent

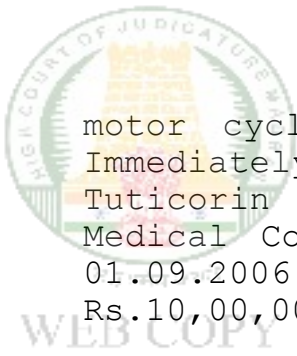
Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in MCOP No.1833 of 2006, dated 25.09.2009 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Tirunelveli.

For Appellant : Mr.K.Bhaskaran
For R1 and R2 : No appearance
For 3rd respondent : Mr.M.P.Senthil

JUDGMENT

Aggrieved over the award of the Motor Accidents Claims Tribunal (II Additional District Judge), Tirunelveli, made in MCOP No.1833 of 2006, dated 25.09.2009, this appeal has been preferred by the appellant Insurance company.

2. The first respondent filed the claim petition alleging that on 30.09.2006 at 6.00 p.m., the deceased Chinnadurai was riding his motor cycle bearing registration No.TN-69-J-9172 from Tuticorin to Puthiyamputhur and when he was nearing Ammaiappar Petrol Bunk, a Tipper lorry bearing registration No.TN-69-E-5919 came from the opposite direction in a rash and negligent manner, hit against the motor cycle. In the impact, the deceased was thrown out of the



motor cycle and sustained grievous injuries all over the body. Immediately, he was taken to Government Medical College Hospital, Tuticorin and after first aid, he was referred to Tirunelveli Medical College Hospital for better treatment and thereafter, on 01.09.2006 he succumbed to the injuries. A claim was made for Rs.10,00,000/-.

3.The claim was opposed by the appellant disputing the manner of the accident and their liability to pay the compensation.

4.The Tribunal, upon consideration of the oral and documentary evidence found that the driver of the lorry, who did not have valid driving licence was responsible for the accident. While awarding compensation of Rs.7,42,300/- together with interest @ 7.5% p.a., directed the Insurance company to pay the amount and thereafter recover from the owner of the vehicle.

5.Though the appellant has assailed the award of the Tribunal on various grounds, Mr.K.Bhaskaran, learned counsel appearing for the Insurance Company would mainly contend that the Tribunal having found that the driver of the lorry was not having valid driving license at the time of the accident, ought to have directed the appellant to pay the compensation amount and then collect the same from the owner of the vehicle.

6.Heard Mr.K.Bhaskaran, learned counsel appearing for the appellant and Mr.M.P.Senthil, learned counsel appearing for the 3rd respondent and perused the materials available on record.

7.In the instant case, as rightly contended by the learned counsel appearing for the appellant, the Insurance company has established before the Tribunal that the driver of the lorry was not having valid driving licence.

8.It is settled law that though the Insurance Company established violation of the policy condition and in respect of the claim made by the third parties, the Insurance company has to first satisfy the award and recover the same from the owner the vehicle.

9.In the case on hand, the Tribunal after considering the facts and circumstances of the case and also relying upon the decisions of the Hon'ble Apex Court directed the appellant Insurance company to pay the award amount and recover the same from the owner of the vehicle.

10.In the judgment reported in **(2004)13 SCC 224** in the case of ***Oriental Insurance Co. Ltd., vs. Nanjappan and others***, the Hon'ble Apex Court made in the following observations:-

<https://hcservices.ecourts.gov.in/hcservices/>
"8.Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in baljit Kaur's case



(supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent-claimants within three months from today. 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."

11. In such view of the matter, this court does not find any illegality or infirmity in the award passed by the Tribunal. In fine, the appeal is dismissed. The appellant Insurance Company is directed to deposit the entire amount together with interest within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the claimants are permitted to withdraw the entire amount without filing any formal petition before the Tribunal. The Appellant Insurance Company is at liberty to recover the award amount from the insured as per the law laid down by the Hon'ble Supreme Court in **Nanjappan's case [(2004) 13 SCC 224]** cited supra. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

/True Copy/



To

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

Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.BHASKARAN, ADVOCATE IN SR No. 31736

ER

TE/DB : 22/11/2016 : 4P/4C

Judgment made in
CMA (MD) No.854 of 2013
and
MP (MD) No.1 of 2013
21.06.2016