



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2016

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**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

C.M.A(MD).No.329 of 2011

and

M.P.(MD) No.1 of 2011

The Oriental Insurance Company Limited,  
Represented by its Manager,  
2<sup>nd</sup> Floor, Vijaya Complex,  
Cumbam Road,  
Theni Taluk,  
Theni District.

..Appellant/ Respondent No.2

Vs.

1.Pandiyammal  
2.Rani  
3.Meena  
4.Vijaya  
5.Vijayan  
6.Panchavarnam  
7.Murugan

... Respondents 1 to 6/Petitioners  
... Respondent No.7/1<sup>st</sup> Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment passed in M.C.O.P.NO.268 of 2009 dated 12.08.2010 on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Theni.

For Appellant : Mr.C.Jawahar Ravindran  
For Respondents 1 to 6: Mr.B.Brijesh Kishore

J U D G M E N T

It is a case of fatal accident and death occurred on the spot during the accident, which took place on 27.10.2009 at about 4.00 p.m near Bomminaickenpatti main road. The heirs of the deceased filed the Claim Petition before the Motor Accident Claims Tribunal, Theni, in M.C.O.P.No.268 of 2009.

2. The Tribunal, considering the facts and circumstances of the case, awarded Rs.3,42,000/- towards total compensation, against which, the Insurance Company preferred the present appeal mainly on the ground that the driver, who was driving the vehicle at the time of accident, was not in possession of any license and therefore, the appellant Insurance Company is to be exonerated

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3. This Court considered the submissions of the learned counsel for the appellant and the learned counsel appearing for



the respondents 1 to 6/claimants and perused the materials available on record.

4. The Tribunal has rightly ordered pay and recovery. It is settled position of law that in the case of claim made by the third party, even if there is any violation of the policy conditions, the Insurance Company has to pay the award amount to the claimant and thereafter, recover the same from the owner of the vehicle.

5. 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."

6. In view of the above, the award of the Tribunal passed in M.C.O.P.NO.268 of 2009 dated 12.08.2010 is confirmed.

7. The learned counsel for the appellant represents that the entire award amount has been deposited. The respondents/claimants are permitted to withdraw the award amount with accrued interest by filing necessary permission petition proportionately.

8. 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.



9. With the above observation, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition in M.P.(MD) No.1 of 2011 is also closed.

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Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To,

Motor Accident Claims Tribunal cum  
Principal District Judge, Theni.

Copy to:-

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

+One cc to Mr.C.Jawahar Ravindran, Advocate, SR.No.68252

+One cc to Mr.B.Brijesh Kishore, Advocate, SR.No.69108

CM

RL/5C/3P/SKS/RR/15.12.2016

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