



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2016

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CORAM:

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

C.M.A. (MD) No.426 of 2011

and

M.P. (MD) 1 of 2011

National Insurance Company Limited,
Represented by its Divisional Manager,
S.N.High Road,
Tirunelveli.

... Appellant/2nd Respondent

Vs.

1.Manthira Subramanian
2.Jaffer Ali
[R2-Ex-parte]

... 1st Respondent/Petitioner
... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, to set aside the judgment and decree dated 20/06/2008 and made in MCOP No. 1778/2005 on the file of the Motor Accident Claims Tribunal / Fast Track Court No.2 Tirunelveli.

For Appellant : Mr.S.R.Srinivasan

JUDGMENT

The Civil Miscellaneous Appeal is filed against judgment and decree dated 20.06.2008 made in M.C.O.P.No.1778 of 2005 on the file of the Motor Accident Claims Tribunal / Fast Track Court No.2 Tirunelveli.

2.It is a case of an injury caused in an accident took place on 02.11.2005 around 2.30 pm at C.N.Village road, Tirunelveli Town. The injured victim filed an application before the Motor Accident Claims Tribunal / Fast Track Court No.2, Tirunelveli in M.C.O.P.No.1778 of 2005 seeking compensation. Considering the facts and circumstances of the case, the Tribunal awarded a sum of Rs.10,000/- as total compensation.

3.Challenging the same, the appellant / National Insurance Company preferred this appeal on the ground of liability.

4.The learned counsel appearing for the appellant contended <https://hdservices.ecourts.gov.in/hdservices/> there is no valid permit for the vehicle which met with an accident at the time of the accident. Therefore, the appellant / Insurance Company is not liable to pay any compensation. This



apart, the learned counsel represented that the driver, who was driving the vehicle, at the time of accident, was not in possession of valid driving licence to drive the particular vehicle, which met with an accident. In fact, he was holding only L.M.V. driving licence and he will not be permitted to drive the heavy transport vehicle.

5. Such being the factual position, the learned counsel for the appellant has stated that the Insurance company is to be exonerated from the total liability. The Tribunal has erroneously fixed the liability on the appellant and ordered for pay and recovery.

6. This court is unable to accept the contention raised by the learned counsel for the appellant in view of the settled principle regarding the fixing of liability in such violations of policy conditions 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 the following observations:-

"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."



7.The Tribunal has rightly applied the above principle and hence, there is no infirmity in the order of the Tribunal passed and accordingly, the award passed in M.C.O.P.No.78 of 2005 dated 20.06.2008 is confirmed and the C.M.A.is dismissed.

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8.The appellant's counsel represented that the entire award amount had been deposited and the respondent / claimant is permitted to withdraw the award amount with accrued interest by RTGS by filing necessary application. No costs. Consequently, connected M.P.is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal/ Fast Track Court No.2,
Tirunelveli.

Copy to: The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Srinivasan, Advocate in SR NO.74169.

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