BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD).No.569 of 2011
and
M.P.(MD)No.1 of 2011

The Oriental Insurance Company Ltd.,
Represented through its
Branch Manager,
555/1, Government Hospital Road,
Theni. .. Appellant/Respondent No.2

Vs.

1. Kalaichelvi .. Respondent No.1/Petitioner
2. Mr.Muthuramalingam .. Respondent No.2/Respondent No.1

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the award of the Motor Accidents Claims Tribunal cum Subordinate Court, Uthamapalayam, made in M.C.O.P.No.111 of 2009, dated 30.10.2010 and allow the appeal with costs.

For Appellant : Mr.C.Jawahar Ravindran
For R-1 : Mr.K.Guhan
For R-2 : Dismissed vide Court order dated 25.03.2013

JUDGMENT

This appeal is directed against the award passed by the Motor Accidents Claims Tribunal, Subordinate Court, Uthamapalayam in M.C.O.P.No.111 of 2009, dated 30.10.2010.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the records.

3. M.C.O.P.No.111 of 2009 was filed by the first respondent claiming compensation of Rs.2,00,000/- for the injuries sustained in the accident on 24.01.2009. According to the claimant, on 24.01.2009 at 12.00 noon she was returning from her lands and when she was proceeding by foot on Chinnamanur-Uthupatti main road, an auto bearing Registration No.TN 60-C-9202 insured with the

appellant came in a rash and negligent manner, hit against her. In the accident, she sustained fracture on her right leg and injury on her neck. Immediately, she was taken to Madurai Devadass Hospital and she took treatment as an in-patient till 10.02.2009. A criminal case was registered against the driver of the auto in Crime No.113 of 2009 by Chinnamanur Police Station for the offences under Sections 279 and 338 of I.P.C.

4. The appellant opposed the claim petition by filing a counter disputing the age and income of the claimant. It was contended that the claimant had suddenly crossed the road without noticing the movement of the vehicle. So, she was only responsible for the accident. Further, it was contended that the charge sheet was filed in the criminal case would establish that the owner of the vehicle has violated the terms and conditions of the policy conditions. So, they are not liable to pay compensation.

5. Before the Tribunal, the claimant examined herself as P.W.1 and examined Dr.Vijayakumaran as P.W.2. P.W.1 has explained that due to the injuries, she could not immediately give a criminal complaint. Ex.P.1 is the First Information Report and Ex.X.1 would show that a criminal case was registered against the driver of the auto in Crime No.113 of 2009 for the offences under Sections 278, 279, 338 and Section 3 r/w 181 and 192 of the Motor Vehicles Act and a final report was also filed against him. Ex.X.2 would reveal that the driver has accepted the guilt, pleaded guilty and paid the fine amount. Based on the evidence, the Tribunal has come to the conclusion that the driver of the vehicle caused the accident and he was not having valid and effective driving licence on the date of the accident.

6. P.W.2 Dr.Vijayakumaran deposed that on the date of accident, the claimant was admitted in Devadass Hospital, Madurai and she was discharged on 10.12.2009. P.W.2 has further deposed that the claimant has suffered 34% permanent disability. Ex.P.8 is the Disability Certificate. Ex.P.2 is the Wound Certificate and Ex.P.7 is the X-Ray. Accepting the evidence of P.W.1 and P.W.2 and documentary evidence, the Tribunal has awarded Rs.51,000/- towards permanent disability by applying Rs.1,500/- per percentage of disability. In addition, the Tribunal has awarded Rs.74,163/- towards medical expenses based on Ex.P.4; Rs.10,000/- towards future medical expenses; Rs.5,000/- towards pain and suffering. The Tribunal has totally awarded Rs.1,40,160/- along with interest at 7.5% p.a., directing the Insurance Company to pay and recover from the owner of the vehicle.

7. The learned counsel for the appellant would submit that the Tribunal, having found that the insured has violated the policy conditions, erred in directing the appellant to pay and recover from the owner of the vehicle.

8. It is settled law that even 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 then recover the same from the owner of 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, in my view rightly, 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 Honourable 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.”

11. The award of the Tribunal is fair and reasonable, therefore it is confirmed. In fine, this Civil Miscellaneous Appeal is dismissed. In view of the dismissal of this appeal, the appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs, if not already deposited, within a period of eight weeks, from the date of receipt of the copy of this Judgment.

12. On such deposit being made, the claimant is permitted to withdraw the entire award amount along with proportionate interest and costs, without filing any formal petition before the Tribunal.

13. 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*** cited supra. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

pmu

To
The Subordinate Judge,
The Motor Accidents Claims Tribunal
Uthamapalayam. (with records)

+1cc to Mr.C.Jawahar Advocate Sr.No. 39238

JAM/08.11.16/SS 2/ 4p-3c

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