



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1048 of 2017

The Correspondent
Mary Matha High School
South Paganoor
North Paganoor Post
Ramji Nagar
Srirangam Taluk
Trichy District.

... Appellant/1st Respondent

Vs.

1.P.Murugan
2.M.Gomathi
3.The Divisional Manager,
ICICI Lombard General Insurance
Company Ltd.,
United Arcade,
3rd Floor, Annamalai Nagar,
Karur Bypass Road,
Thillai Nagar,
Trichy.

... Respondents 1 and 2/Petitioners

... 3rd Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 (1) of Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.403 of 2011 on the file of the Sub Court, Kulithalai (Motor Accident Claim Tribunal) dated 06.02.2015.

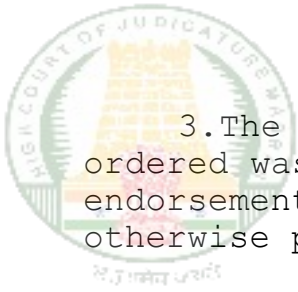
For Appellant : Mr.C.Vakeeswaran

For Respondents : Mr.K.K.Ramakrishnan for R3

JUDGMENT

Heard the learned counsel on either side.

2.The vehicle owner has filed this appeal questioning the application of pay and recovery principle by the Tribunal while passing an award in favour of the claimants.



3.The ground on which the pay and recovery principle was ordered was that the driver of the insured vehicle was not having an endorsement to drive the transport vehicle even though he was otherwise possessing LMV driving license.

4.The learned counsel appearing for the appellant placed reliance on the decision of the Hon'ble Supreme Court reported in 2017(2) TNMAC 145 (SC) - *Mukund Dewangan Vs. Oriental Insurance Co. Ltd.* On the other hand, Mr.K.K.Ramakrishnan, learned counsel for the insurer pointed out that the Hon'ble Supreme Court is zeised of the matter and is to take a decision on the decision rendered in *Mukund Dewangan* case is to be referred to a Larger Bench. For this purpose, the matter is to be listed on 16.01.2018 in S.L.P. No.27787 of 2017. He would therefore call upon this Court to defer the proceedings.

5.I am of the view that as on date, the issue on hand is squarely covered by the decision in *Mukund Dewangan* case. It is true that an attempt has been made to doubt the correctness of the said decision. The Hon'ble Supreme Court is to take a call in the matter on 16.01.2018. But, on that date, a decision to refer or not to refer alone will be taken. Hence, I am of the view that this case can be decided based on the position that obtains as on date. I therefore allow this appeal. Permission granted to the insurer to recover the paid amount from the vehicle owner is set aside.

6.The award dated 06.02.2015 made in M.C.O.P.No.403 of 2011 on the file of the Sub Court, Kulithalai (Motor Accident Claim Tribunal) is accordingly modified.

7.The third respondent insurance company is directed to deposit the entire compensation amount of Rs.4,80,000/- with interest at the rate of 7.5% per annum, from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants are permitted to withdraw the same as apportioned by the Tribunal by filing proper application before the Tribunal, less the amount already withdrawn by them, if any.

8.This civil miscellaneous appeal stands partly allowed. No costs.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar



To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
(Subordinate Court),
Kulithalai.

2.The Record Keeper, Vernacular Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.C.Vakeeswaran, Advocate, SR.No.94105

+One cc to Mr.K.K.Ramakrishnan, Advocate, SR.No.94269

Arul

RL/6C/3P/SKN/RSK/SAR4/21/2/2018

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