

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated : 28.07.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.M.A. (MD) .No.1254 of 2014**

The New India Assurance Company Limited,
Branch Office, Jerome Building,
Fort Station Road,
Tiruchy.

.. Appellant /2nd Respondent

Vs.

1.T.Thenmozhi

..1st Respondent/ Petitioner

2.C.Manivannan

..2nd Respondent /1st Respondent

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order made in M.C.O.P.No.242 of 2013, dated 10.10.2013 on the file of the Motor accidents Claims Tribunal, Special Subordinate Court, Tiruchirappalli.

For Appellant

: Mr.J.S.Murali

For R1

: Mr.R.Maheswaran

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award dated 10.10.2013 passed in M.C.O.P.No.242 of 2013 by the Motor accidents Claims Tribunal, Special Subordinate Court, Tiruchirappalli.

2The case of the claimants in the petition is briefly as follows:

On 06.09.2002 at about 11.30 hours in the night, the injured was sleeping in front of the shop situated on the northern side of Samayapuram Bus stop. There were some other pilgrims who came to the temple also sleeping in front of the said shop. At that time, a mini bus bearing registration No.TN 45 N 0436 of the first respondent insured with the second respondent, which was coming from the South to North direction and was driven by its driver in a rash and negligent manner, unmindful of traffic rules, ran over the petitioner and other persons, who were sleeping in front of the said shop. The front tyres of the said bus ran over the petitioner and others and finally, the said bus stopped by touching the wall at the end of the said road. Due to the unexpected accident five persons who were sleeping in front of the shop died on the spot itself. The



petitioner sustained multiple grievous injuries all over the body including fracture in the right leg and bleeding injury in left leg finger. Hence, the claimant filed claim petition claiming a sum of Rs.4,00,000/- as compensation.

3. Before the Tribunal on the side of the petitioner, P.Ws.1 and 2 were examined and Exs.P1 to P8 were marked. On the side of the respondents, R.W.1 was examined and Exs.R1 & R2 was marked.

4. On consideration of the evidence available on record, the Tribunal, has awarded a sum of Rs.1,25,486/- with interest at the rate of 7.5% p.a. permitting the second respondent to pay the same and recover the same from the first respondent. Challenging the said award, the New India Assurance Company is before this Court.

5. The learned counsel for the appellant/ New India Assurance Company would submit that the appellant has filed this appeal challenging the order of pay and recovery. The learned counsel would fairly submit that the award of the lower Court may be confirmed and prayed for following the judgment in **ORIENTAL INSURANCE COMPANY LIMITED V. NANJAPPAN AND OTHERS** reported in **2004 (2) CTC 464**, wherein the mode of recovery has been clearly dealt in paragraph 8 of the judgment, which reads as follows:-

"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 orders as to costs.



Appeal disposed of accordingly."

6. Heard the learned counsel for the petitioner as well as the respondent/claimant.

7. In view of the above, the Judgment of the learned Tribunal is confirmed. The appellant / New India Assurance Company is directed to pay the compensation and recover the same by following the guidelines in the above Judgment, from the owner of the vehicle.

8. The appellant / Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5% p.a. within a period of six weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the claimant is permitted to withdraw the award amount with proportionate interest and costs, without filing any formal petition before the Court below.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Motor accidents Claims Tribunal,
Special Subordinate Court, Tiruchirappalli.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. R. MAHESWARAN Advocate in SR. No. 68937

+1cc to Mr. J. S. MURALI Advocate in SR. No. 68621

RJ2

JS/GT/SAR.2/29.08.2017/ 3P-5C

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