

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

DATED : 05.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU**C.M.A(MD)No. 690 of 2017**

- 1.Raj Mahajan
- 2.Minor Velci
- 3.Minor Vinija

... Appellants/Petitioners

(Appellants 2 and 3 represented by
their father and natural guardian
Raj Mahajan - I Appellant)

Vs.

- 1.Vettrivel Murugan
- 2.S.Santhanamuthu

3. The New India Assurance Company Limited,
by its Branch Manager,
Branch Office,
Pillars Gate, Balamore Road,
Nagercoil,
Kanyakumari District.

4. Oriental Insurance Company Limited,
by its Branch Manager,
T.T.J.Centre (Opp to Vadaseri Bus Stand)
Nagercoil, Kanyakumari District. ... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 10.11.2009 made in M.C.O.P.No.57 of 2009 on the file of the Motor Accidents Claims Tribunal-cum-II Additional Subordinate Judge, Nagercoil.

For Appellants : Mr.S.Subbiah,
Senior Counsel for Mr.S.Subramanian
For R-1 : Mr.M.Dennis
For R-3 : Mr.J.S.Murali
For R-4 : Mr.Balasubramanian

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants against the award dated 10.11.2009 made in



"6..... In the present case, we have already referred to the specific stand taken by the Insurance Company in their counter statement, the evidence of R.W.1, their officer, Exs.R-1 to R-5 and the conduct of the driver and the owner in not responding to the request of the Insurance Company for production of valid licence to driver a lorry. Accordingly, as observed by the Supreme Court in 2001 ACJ 843 (cited supra), we hold that the Insurance Company is liable to pay compensation to the claimants-respondents 1 to 4 herein and on account of violation/namely, the lorry being driven without a valid licence, the appellant/Insurance Company is entitled to recover from the insured..."

10. Heard the submissions made on either side and perused the materials available on record.

11. In view of the above, the Tribunal ought to have directed the third respondent/Insurance Company to pay compensation at the first instance and then recover the same from the owner of the vehicle, namely the second respondent herein. It is well settled law that the claimant should not suffer even after obtaining an order for compensation. The provisions relating to the award of compensation are benevolent provisions in favour of claimants. The Hon'ble Apex Court in various Judgments have formulated the policy of "pay and recovery". In the present case, there is no reason to deviate from the principle of "pay and recovery".

12. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed. The third respondent/Insurance Company is directed to pay the amount awarded by the Tribunal, with interest at the rate of 9 % per annum, from the date of petition, till realization, at the first instance and then, recover the same from the owner of the vehicle/second respondent and in all other aspects, the award of the Tribunal, is confirmed. The third respondent shall deposit the award amount to the credit of M.C.O.P., on the file of the claims Tribunal within a period of eight weeks from the date of receipt of a copy of this order and in the later stage, the third respondent/Insurance Company is entitled to recover the same from the owner of the vehicle/second respondent, by way of Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in 2004(2)CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others).

(ii) On such deposit being made, the major claimant is permitted to withdraw his share as apportioned by the Tribunal, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain



majority. The guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. No Costs.

Sd/-

Assistant Registrar(CS-I)

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/True Copy/

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal/
II Additional Subordinate Judge, Nagercoil.
2. The Branch Manager,
The New India Assurance Company Limited,
Branch Office,
Pillars Gate, Balamore Road,
Nagercoil,
Kanyakumari District.
3. The Branch Manager,
The Oriental Insurance Company Limited,
T.T.J.Centre (Opp to Vadaseri Bus Stand)
Nagercoil, Kanyakumari District.
4. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.J.S.MURALI, Advocate SR.No.76733.

+2cc to M/S.N.SUBRAMANIAN, Advocate SR.No.76492 & 77252.

C.M.A (MD) No.690 of 2017
05.09.2017

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