BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :31.07.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.796 of 2015

and

C.M.P.(MD)No.2 of 2015

The Branch Manager,
The Oriental Insurance Company Ltd.,
Theni Town and District. ... Appellant/4th respondent

Vs.

1.Tmt.Pattammal

Thiru.Kumar(died)

2.Selvi Geetha

3.Selvi Latha ...1st to 3rd Respondents/ 1st to 3rd Petitioners

4.Proprietor,
Lena Bus Service,
Sathiyamoorthy Road,
Pudukkottai. ... 4th respondent/ 1st respondent

5.The Branch Manager,
United India Insurance Company Ltd.,
Pudukkottai.
(Exonerated as per order Dated 11.10.2011 in I.A.No.912 of 2011)
...5th respondent/2nd respondent

6. Thiru. Kaliyappan,
Proprietor: AKS Sweets and Biscuit Company,
Railway Feeder Road,
Kamarajar Nagar, Andipatti,
Theni District. ...6th respondent/3rd respondent

(4th and 6th respondents remained ex-parte
before the lower Court)

7.The Branch Manager,
Oriental Insurance Company Ltd.,
Pudukkottai. ...7th respondent/5th respondent
(7th respondent is given up)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.396 of 2012 dated 31.01.2013,on the file of the Motor Accident Claims Tribunal cum Additional District Judge, Pudukkottai.

For Appellant	:	Mr.K.Bhaskaran
For R-1 to R-3	:	Mr.K.G.Arunkumar
For R-4	:	No appearance
For R-5	:	Mr.Dilipkumar
For R-6	:	Deceased
For R-7	:	Given up

ORDER

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 31.01.2013 made in M.C.O.P.No.396 of 2012 by the Motor Accidents Claims Tribunal, Additional District Judge, Pudukkottai.

2. It is a case of fatal accident, which took place on 22.01.1994 at about 05.15 p.m., near old Gandharvakottai in Pudukkottai to Thanjavur main Road, Thurusupattai Vilakku Road, Gandharvakottai Taluk.

3. It is the case of the claimants before the Tribunal that on the date of accident, when the deceased was travelling as a passenger in the bus bearing Registration No.TN 55 A 1111 on Tanjore-Gandharvakottai road, near Old Gandharvakottai, the lorry bearing registration No.TN 60 1266 came and both the drivers, drove their vehicle in a rash and negligent manner and dashed against each other and both the vehicles capsized and in the accident, the deceased succumbed to the injuries.

4. The claimants filed an application in M.C.O.P.No.396 of 2012, on the file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Pudukkottai, seeking compensation.

5. Before the Tribunal, the claimants examined two witnesses as P.Ws.1 to 2 and marked nine documents as Ex.P.1 to Ex.P.9. The appellant did not let in any oral or documentary evidence before the Tribunal.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the drivers of both the vehicles and fixed 50:50 liability and directed the seventh respondent and the appellant to pay the compensation and gave liberty to the appellant to recover the same from the owner of the vehicle/sixth respondent herein.

7.Against which, the appellant/Insurance Company has filed this present appeal challenging the liability.

8. When the matter came up for hearing today, the learned counsel would fairly submit that since both the offending vehicles are insured with the appellant/Oriental Insurance Company, the award of the lower Court may be confirmed, 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."***

9. At this point of time, the learned counsel for the respondents 1 to 3/claimants submitted that the claimants have filed cross-appeal and the same is in S.R. Stage.

10. I am of the considered view that the accident occurred in the year 1994 and therefore, if there is any cross-appeal by the claimants, after a period of 22 years, it cannot be entertained.

11.Heard the learned counsel appearing on either side and perused the materials available on record.

12.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". Therefore, the Tribunal has rightly directed the appellant to pay compensation at the first instance and then, recover the same from the sixth respondent. There is no error in the said finding. Therefore, I have no reason to interfere with the finding of the Tribunal.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 31.01.2013 made in M.C.O.P.No.396 of 2012 passed by the Motor Accidents Claims Tribunal, Additional District Judge, Pudukkottai, is hereby confirmed. The appellant/Oriental Insurance Company and the seventh respondent/Oriental Insurance Company, are directed to deposit their respective shares with proportionate interests and costs, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and in the later stage, the appellant/Insurance Company is entitled to recover the same from the owner of the vehicle/sixth 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)***. On such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal, with accrued interests and costs, without filing any formal application before the Tribunal. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Additional District Judge,
Pudukkottai.

PM
JS/MR.KKR/SAR.2/18.08.2017/4P-2C

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and
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