BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1274 of 2011

James ... Appellant / Petitioner

Vs.

1.Kandasamy

2.The Oriental Insurance Company Ltd.,
Zonal Office-10,
through its Zonal Manager,
Office at Door No.79, 2nd Floor
Uthamargandhi Salai
Chennai-600 034. ...Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 18.04.2011 made in M.C.O.P.No.248 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Sivagangai.

For Appellant : Mrs.K.R.Shivashankari for Mr.S.Srinivasa Ragavan
For R-1 : No Appearance
For R-2 : Mr.K.Baskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai made in M.C.O.P.No.248 of 2010 dated 18.04.2011.

2. It is a case of injury sustained by the injured in an accident, which took place on 14.09.2006 at about 10.30 a.m., at Padamathur to Thiruppachetty road, near Sakthi Sugar Mill.

3. It is the case of the claimant before the Tribunal that on the date of accident, when he was driving the Mahindra Mini Door Van bearing Registration No.TN 63-E-0744 on Padmathur-Thiruppachetty road, near Sakthi Sugar Mill, the lorry bearing Registration No.K.A.01-6788, which was coming from South to North in the opposite direction was driven by its driver in a rash and negligent manner and as a result, the lorry collided with the Mahindra Mini Door Van and caused the accident and in the said accident, the injured sustained grievous injuries.

4. The claimant filed an application in M.C.O.P.No.248 of 2010, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Sivagangai, seeking compensation.

5.Before the Tribunal, the claimant examined three witnesses as P.Ws.1 to 3 and marked Nineteen documents as Ex.P.1 to Ex.P.19. The respondents examined three witnesses as R.Ws.1 to 3 and marked four documents as Ex.R1 to R4.

6. The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidences on record, held that the accident occurred only due to the rash and negligent driving of the lorry, belonging to the first respondent and insured with the second respondent and since the driver of the lorry did not possess the valid driving licence at the time of accident, the Tribunal directed the first respondent to pay compensation of Rs.1,41,900/-.

7.Against which, the appellant/claimant filed this present appeal challenging the liability.

8. The learned counsel appearing for the appellant submitted that the Tribunal erred in absolving the liability of the Insurance Company from indemnifying the owner of the vehicle. He further submitted that since the Insurance policy is admitted, the Tribunal ought to have ordered pay and recovery.

9.In support of her submissions, the learned counsel for the appellant relied on the judgment in ***National Insurance Company v. Samiyathal & Others*** reported in ***2004(1) TN MAC(DB) 455***, wherein in similar circumstances, the Honourable Division Bench of this Court has held as follows:

> ***"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.Per contra, the learned counsel for the second respondent/Insurance Company submitted that after considering the evidence on record, the Tribunal held that the driver of the lorry did not possess the valid driving licence at the time of accident and therefore, the Insurance Company is not liable to pay compensation and the owner of the vehicle alone is liable to pay the compensation and therefore, there is no infirmity in the said finding.

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

12. Perusal of the award shows that even though Insurance Policy was admitted, since the possession of valid driving licence was not proved, the Tribunal directed the owner of the vehicle to pay compensation. This Court is of the view that since the Insurance Policy was admitted, the Tribunal ought to have directed the second respondent/Insurance Company to pay compensation at the first instance and then recover the same from the owner of the vehicle, namely the first 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".

13. In the result, this Civil Miscellaneous Appeal is allowed and the second respondent/Insurance Company is directed to pay the amount awarded by the Tribunal at the first instance and then, recover the same from the owner of the vehicle,namely the first respondent herein. The Insurance Company shall deposit the award amount to the credit of M.C.O.P., on the file of 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 Insurance Company is entitled to recover the same from the owner of the vehicle/first 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 making such deposit, the appellant/claimant is at liberty to withdraw the entire award amount along with accrued interest and costs, without filing a formal application seeking permission. No costs.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To,
The Chief Judicial Magistrate,
Motor Accident Claims Tribunal, Sivagangai.
+1cc to M/s. S.SRINIVASA RAGHAVAN Advocate in SR. No. 77267
+1cc to M/s. K.BHASKARAN Advocate in SR. No. 76808
PM
JS/JC/SAR.1/1.11.2017/3P-4C

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