BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.295 of 2011

A.Siluavai Francis ... Appellant / Claimant

Vs.

1.R.Prakasa Jivitha
2.M/s.The New India Assurance Co. Ltd.,
Through its Divisional Manager,
Having office at 41-B, Victoria Street,
Thoothukudi. ...Respondents /Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the award dated 08.09.2010 made in M.C.O.P.No.37 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thoothukudi.

For Appellant	:	Mr.R.Balakrishnan
For R2	:	Mr.D.Sivaraman
R1	:	Died

J U D G M E N T

Being aggrieved over the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thoothukudi in M.C.O.P.No.37 of 2009, the claimant has filed the present appeal.

2**.Facts of the Case:-**

According to the claimant, he was working as a Mechanic in M/s.Agalya Gas Agency at Tuticorin. On 20.04.2009, at about 21.45 hours, after finishing his work in Gas Agency, he returned to his home on his two wheeler bearing registration No.TN 69 J 8213 on the Great Cotton road, at the extreme left side of the road. When he was proceedings near Akalya hotel, a motor cycle bearing registration No.TN 69 P 3929 belonged to the first respondent came in a rash and negligent manner and hit behind the petitioner's motor cycle. Due to the sudden accident, the petitioner was thrown away from his motor cycle and sustained grievous injuries all over the body. FIR was registered against the driver of the vehicle. The vehicle was insured with the second respondent Insurance Company. Therefore, he filed the claim petition, claiming a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation.

3.The respondents filed counter statement and contended that the accident took place only due to the negligent of the appellant/claimant, and that the first respondent did not possess any valid licence and therefore, prayed for the dismissal of the Claim Petition.

4.Before the Tribunal on the side of the petitioner, P.W.1 was examined and Exs.P1 to P11 were marked. On the side of the respondents, R.W.1 was examined and Exs.R1 to R3 were marked.

5.The Tribunal, considering the pleadings, oral and documentary evidence, came to the conclusion that the accident took place only, due to the rash and negligent driving of the first respondent and held that the first respondent did not have a valid licence and directed the first respondent to pay a sum of Rs.73,950/- (Rupees Seventy Three Thousand Nine Hundred and Fifty Only), as compensation to the appellant/claimant.

6.I have heard the learned Counsel appearing for the appellant and the learned counsel for the second respondent and perused all the materials available on record.

7.At the outset, the learned counsel for the appellant/claimant has submitted that he is not questioning the quantum awarded by the Tribunal, but he would submit that since the first respondent did not possess valid driving licence, the award was directed to be paid by the first respondent and hence, he is requesting that the right to recover the award from the Insurance Company must be ordered. In support of his contention, he has relied on the Judgment of the Hon'ble Supreme Court in ***NATIONAL INSURANCE CO. LTD., v. SWARAN SINGH AND OTHERS*** reported in ***2004 (1) TN MAC 104***, wherein at paragraph Nos.96 and 99, it has been held as follows:-

> *"96.It is, therefore, evident form the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from, the owner of driver thereof has been holding the filed for a long time.*
>
> *99. We may, however, hasten to add that the Tribunal and the Court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner of driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Claims Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor*

against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to knowledge of the insurer at a later stage."

8.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 claimant. 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".

9.In the result, this Civil Miscellaneous Appeal is partly 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/first respondent. The second respondent/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 second respondent/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 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-I)

/True Copy/

Sub Assistant Registrar

To,

1.The Motor Accident Claims Tribunal
(Chief Judicial Magistrate), Thoothukudi.

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

+1cc to Mr.R.BALAKRISHNAN Advocate in SR. No.74419
+1cc to Mr.D.SIVARAMAN Advocate in SR. No. 74050

RJ2

JS/MR.KKR/SAR.4/18.09.2017/4P-5C

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