



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.45 of 2011
and M.P(MD).No.1 of 2011

The Manager,
The Oriental Insurance Company Ltd.,
119, Sathayamoorthy Illam,
Sekkalai Road, Karaikudi,
Tamil Nadu.

... Appellant /2nd Respondent

Vs.

1.Thangalakshmi ... 1st Respondent/Petitioner
2.V.Soundarapandi ... 2nd Respondent/1st Respondent
3.M.Shanmugha Raja ... 3rd Respondent/3rd Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the award made in M.C.O.P.No.211 of 2008 dated 21.07.2010, on the file of the Motor Accidents Claims Tribunal cum IV Additional Subordinate Judge, Madurai.

For Appellant : Mr.K.Bhaskaran
For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the award made in M.C.O.P.No.211 of 2008 dated 21.07.2010, on the file of the Motor Accidents Claims Tribunal cum IV Additional Subordinate Judge, Madurai.

2. It is a case of injury that caused in the accident that took place on 26.01.2007 at 12.00 noon. While the injured was walking at Kamarajar Salai, an auto rickshaw bearing Registration No.T.N.63-Y-1768, which was insured with the appellant-Insurance Company came in rash and negligent manner and dashed against the injured. Due to the said impact, she sustained several grievous injuries. Hence, the injured filed an application in M.A.C.O.P.No.211 of 2008 on the file of Motor Accidents Claims Tribunal cum IV Additional Sub Judge, Madurai seeking a sum of Rs.1,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimants, two witnesses viz., P.Ws.1 to 2 were examined and eight documents viz., Ex.P.1 to Ex.P.8 were marked and on the side of respondent, two witnesses viz., R.W.1 and R.W.2 was examined and two documents viz., Ex.R.1 and Ex.R.2 were marked.



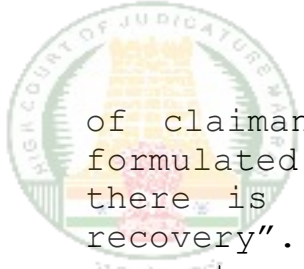
4.The Tribunal, after considering the pleadings, oral and documentary evidences and arguments of the counsel for the appellant and claimant and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the offending vehicle and directed the appellant/Insurance Company to pay a sum of Rs.68,491/-, as compensation.

5. Against which, the appellant/Insurance Company has filed this present appeal. Though the present appeal has been filed on various grounds, at the time of arguments, the learned counsel for the appellant mainly questioned the order of pay and recovery.

6. The relevant portion of the findings of the Tribunal is extracted as follows:

"8.There is dispute that the 1st respondent vehicle had permit to drive only within 30 K.M in Sivagangai district. But the accident was occurred at kamarajar salai, Madurai. It is argued by the petitioner that the auto was sent to repair work in the automobile workshop; on the way the auto involved in accident. Hence it did not violate the permit condition. It is true that the auto was permitted to ply in Sivagangai district. It is also admitted by the petitioner. While the accident was occurred in Madurai it is for the petitioner to prove that while the auto was going to workshop the accident was occurred. To prove the contention petitioner did not adduce sufficient evidence. The FIR and other connected police records does not say about the contention of the petitioner. The petitioner did not examine independent witness to prove the contention. While the accident was at Madurai, it should be construed that the condition of the policy was violated. Once a condition, is violated the owner of the vehicle alone is responsible for the accident. As such 1st respondent shall bear the compensation awarded as above. Instead of him, the 2nd respondent shall pay the compensation, later on it is set at liberty to collect the same from the 1st respondent. Thus, this point is answered accordingly."

7.The Tribunal has rightly directed the appellant to pay compensation at the first instance and then, recover the same from the owner of the vehicle. There is no error in the said finding. It is 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". The compensation awarded in respect of various heads are not excessive. It is only based on the documents.

8. In the result, this Civil Miscellaneous Appeal is dismissed and the award made in M.C.O.P.No.211 of 2008 dated 21.07.2010, on the file of the Motor Accidents Claims Tribunal cum IV Additional Subordinate Judge, Madurai, is hereby confirmed and the appellant/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. The appellant Insurance Company shall deposit the award amount as ordered by the Tribunal to the credit of M.C.O.P.No.211 of 2008 dated 21.07.2010, on the file of the Motor Accidents Claims Tribunal cum IV Additional Subordinate Judge, Madurai, within a period of eight weeks from the date of receipt of a copy of this order and in the later stage, the appellant Insurance Company is entitled to recover the same from the owner of the vehicle, 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 award amount along with accrued interest and costs, without filing a formal application seeking permission. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub-Assistant Registrar

To

1. The IV Additional Subordinate Judge,
The Motor Accidents Claims Tribunal , Madurai
2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.K.Bhaskaran, Advocate, SR.No.76796

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RL/4C/3P/GT/SAR1/3/10/2017

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