

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

Dated : 20.07.2017

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.A. (MD) .No.865 of 2011****and****M.P. (MD) No.1 of 2011**

The Divisional Manager,  
The National Insurance Company Limited,  
3, North Veli Street,  
Madurai.

.. Appellant /2<sup>nd</sup> Respondent

Vs.

1.K.Selvaraj

.. 1<sup>st</sup> Respondent/ Petitioner

2.K.Kannan

.. 2<sup>nd</sup> Respondent/ 1<sup>st</sup> Respondent

**Prayer:-** Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order made in M.C.O.P.No.1286 of 2007, dated 08.12.2010 on the file of the Motor accidents Claims Tribunal, IV Additional Subordinate Court, Madurai.

For Appellant : Mr.J.S.Murali  
For Respondents : No Appearance

**J U D G M E N T**

This Civil Miscellaneous Appeal is directed against the award dated 08.12.2010 passed in M.C.O.P.No.1286 of 2007 by the learned IV Additional Sub Judge, Madurai.

2.Before the Tribunal, the appellant herein is the second respondent; the first respondent herein is the petitioner and the 2<sup>nd</sup> respondent herein is the first respondent.

3. The case of the claimant in the petition is briefly as follows:

On 10.09.2006 at about 02.00 p.m., near Karaikeni kanmai, at T.Kallupatty to Kallikudi main road, while the petitioner was travelling as a passenger in the auto bearing Reg.No.TN 58 C 9385, which was driven by its driver in a rash and negligent manner and the said auto capsized in the occurrence place and met with an



accident due to the rash and negligent driving of the first respondent's driver of the vehicle which is insured with the 2<sup>nd</sup> respondent and the petitioner sustained multiple injuries. Hence, the petitioner claims compensation for an amount of Rs.2,00,000/-.

4. Before the Tribunal on the side of the petitioner, P.Ws.1 & 2 were examined and Exs.P1 to P7 were marked. On the side of the respondents, R.Ws.1 to 3 were examined and Exs.R1 to R3 were marked.

5. On consideration of the evidence available on record, the Tribunal, has awarded a sum of Rs.45,863/- with interest at the rate of 7.5% p.a. Challenging the said award, the Insurance Company is before this Court.

6. The learned counsel for the appellant would submit that the appellant has filed this appeal challenging the order of pay and recovery. The learned counsel would fairly submit that 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 effect 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.

Appeal disposed of accordingly."

7. Following the above Judgment, this Court is of the view that the Tribunal has correctly held pay and recovery. Therefore, I have no reason to interfere with the finding of the Tribunal.

8. In view of the above, the appellant / Insurance Company is directed to pay the compensation and recover the same from the owner of the vehicle, as per the above Judgement. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

9. The appellant / Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5% p.a. within a period of six weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the claimant is permitted to withdraw the award amount with proportionate interest and costs.

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

1. The Motor accidents Claims Tribunal,  
IV Additional Subordinate Court, Madurai.

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

+1 CC to M/s.J.S.MURALI, Advocate, SR No. 66822.

RJ2

PSM/GT/SAR1/23.08.2017/3P/4C

**C.M.A. (MD) .No.865 of 2011**

**and**

**M.P. (MD) No.1 of 2011**

**20.07.2017**