



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.07.2017

CORAM:

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) .Nos.913 and 914 of 2011
and
M.P. (MD) Nos.1 & 1 of 2011

C.M.A. (MD) .Nos.913 of 2011:

The Branch Manager,
National Insurance Company Limited,
North Car Street,
Nagercoil 629 001.

.. Appellant /2nd Respondent**Vs.**

1.Jeyaseelanbabu

.. Respondent/Petitioner

2.Ravichandran

.. Respondent/1st 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.86 of 2010, dated 07.04.2011 on the file of the Motor accidents Claims Tribunal (Chief Judicial Magistrate), Tirunelveli.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 : Mr.V.Sasikumar
For R2 : No Appearance

C.M.A. (MD) .Nos.914 of 2011:

The Branch Manager,
National Insurance Company Limited,
North Car Street,
Natercoil 629 001.

.. Appellant/2nd Respondent**Vs.**

1.Hemalatha

.. Respondent/Petitioner

2.Ravichandran

.. Respondent/1st 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.94 of 2010, dated 07.04.2011 on the file of the Motor accidents Claims Tribunal (Chief Judicial Magistrate), Tirunelveli.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 : Mr.V.Sasikumar

For R2 : No Appearance

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COMMON JUDGMENT

These Civil Miscellaneous Appeals are directed against the award dated 07.04.2011 passed in M.C.O.P.No.86 of 2010 and M.C.O.P.No.94 of 2010 by the Motor accidents Claims Tribunal (Chief Judicial Magistrate), Tirunelveli.

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

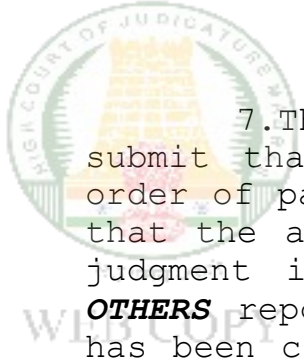
3.Both the appeals arise out of the same Judgment and therefore, both the appeals are disposed of by this common Judgement.

4.The case of the claimants in the petition is briefly as follows:

On 16.11.2009, the petitioner in M.C.O.P.No.86 of 2010 was riding a Motor Cycle bearing registration No.TN 57 J 1632, accompanying with the petitioner in M.C.O.P.No.94 of 2010 as pillion rider, on the Ranithottam to Derick junction main road from west to east at 08.50 p.m. when they came in front of Seema medical store, which is nearby karolin hospital, a motor cycle bearing registration No.TN 74 P 1393 belonging to the first respondent and insured with the second respondent driven by its driver in a rash and negligent manner coming from behind side and dashed against the motor cycle, in which the petitioners travelled and thereby caused accident. Due to the impact, the petitioners sustained multiple injuries all over their body. Hence, they filed claim petition claiming a sum of Rs.5,00,000/- and Rs.1,00,000/- as compensation.

5. Before the Tribunal on the side of the petitioner, P.Ws.1 to 3 were examined and Exs.P1 to P13 were marked. On the side of the respondents, R.Ws.1 & 2 were examined and Exs.R1 to R5 were marked.

6. On consideration of the evidence available on record, the Tribunal, has awarded a sum of Rs.1,88,695/- with interest at the rate of 7.5% p.a. In M.C.O.P.No.86 of 2010 and a sum of Rs.10,000/- with interest at the rate of 7.5% p.a. In M.C.O.P.No.94 of 2010 permitting the second respondent to recover the same from the first respondent. Challenging the said award, the Insurance Company is before this Court.



7. The learned counsel for the appellant/Insurance 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 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.

Appeal disposed of accordingly."

8. Following the above Judgment, this Court confirms the order of the Tribunal.

9. In view of the above, the appellant / Insurance Company is directed to pay the compensation and recover the same by following the guidelines in the above Judgment, from the owner of the vehicle. The Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

10. 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 claimants are permitted to withdraw the award amount with proportionate interest and costs.

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Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate
Motor accidents Claims Tribunal,
Tirunelveli.

+ 2 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 66883 & 66884
+ 2 CC TO Mr.V.SASIKUMAR, ADVOCATE IN SR No. 66668 & 66669

RJ2

TE/SKN-RSK/SAR-I : 22/08/2017 : 4P/6C

C.M.A. (MD) .Nos.913 and 914 of 2011 and
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