



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.191 of 2014

Lakshmiammal

... Appellant/Petitioner

vs.

1)Velladurai

2)United India Insurance Company Ltd.,
No.1, Post Office Road,
Palayamkottai,
Tirunelveli-627 002.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.10.2013 made in M.C.O.P.No.359 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli.

For Appellant	: Mr.R. Krishnan for Mr.T.Selvakumaran
For R2	: Mr.N.Sivakumar
For R1	: Dispense With

JUDGMENT

This appeal has been filed against the judgment and decree dated 07.10.2013 made in M.C.O.P.No.359 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli.

2.In an accident which occurred on 04.09.2010, the appellant/claimant sustained fracture in the right hand and other injuries. She made a claim in M.C.O.P. No.359 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Tirunelveli, claiming compensation of Rs.4,00,000/-. The 2nd respondent insurance company filed counter resisting the claim petition. Considering the oral and documentary evidence adduced on either side, the Tribunal awarded compensation of Rs.2,16,000/- with 9% per annum from the date of claim. Aggrieved by the said award, the appellant has filed this appeal challenging liability and quantum of compensation.

3.Learned counsel for the appellant/claimant would contend that though the policy is a comprehensive policy and the offending



vehicle is the Tractor and Trailer and that the deceased was an agricultural coolie, the learned Judge instead of ordering pay and recover erroneously dismissed the claim petition as against the 2nd respondent/insurance company, stating that the driver of the vehicle did not have valid driving licence and that the driver of Tractor carried 25 passengers violating the conditions of insurance policy. Therefore, the learned counsel prayed for pay and recovery.

4. Perusal of the impugned order shows that before the Tribunal, the 2nd respondent insurance company contended that at the time of accident, 25 persons were travelled in the Tractor and that the driver of the offending vehicle did not possess valid driving licence. To prove the same, the 2nd respondent examined a witness and marked Ex.R5-certificate showing that the driver of Tractor Palani Murugan did not possess valid driving licence. Therefore, the 2nd respondent contended that they are not liable to pay compensation.

5. As rightly contended by the learned counsel for the appellant, it is a settled legal position that even if the insurance company is able to discharge their burden that the driver of the offending vehicle did not possess a valid driving licence or permitted passengers beyond the permitted limit in violation of the policy conditions, the only remedy that can be given to the insurance company is to pay the compensation to the claimants at the first instance and thereafter recover the same from the owner of the vehicle.

6. Therefore, the finding of the Tribunal is modified to the effect that the 2nd respondent shall pay compensation to the appellant at the first instance and permitted to recover the same from the 1st respondent/owner of the vehicle as per the following mode incorporated in the judgment of the Hon'ble Supreme Court in **Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others**, reported in **I (2004) ACC 524 (SC):-**

'' (7)For the purpose of recovering the compensation amount 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 insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. 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 realisation by disposal of the securities to be furnished or from any other property of the insured.''

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7.As far as the quantum of compensation is concerned, it is the only grievance of the learned counsel for the appellant that the Tribunal awarded Rs.1,08,000/- for 54% disability suffered by the appellant by awarding Rs.2,000/- for each percentage of disability and as per the judgment of this Court in *National Insurance Company Limited vs. G.Ramesh*, reported in 2013 (2) TN MAC 583, a sum of Rs.3,000/- may be granted for each percentage of disability.

8.As per the above judgment, if Rs.3,000/- is awarded for each percentage of disability, the disability compensation for 54% disability would be 1,62,000/-. Accordingly, the compensation of Rs.1,08,000/- towards partial permanent disability is enhanced to Rs.1,62,000/-. Except the above head, the award under other heads is not disputed and the same are confirmed. Accordingly, the quantum of compensation is fixed at Rs.2,70,000/-.

9.The 2nd respondent is directed to deposit Rs.2,70,000/- with interest at 9% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the same without filing formal petition before the Tribunal. As held earlier, after deposit of the above amount, the 2nd respondent is permitted to recover the same from the owner of the vehicle as per the mode of recovery incorporated in Nanjappan's case (cited supra).

Accordingly, this Civil Miscellaneous Appeal is allowed in part. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Judge,
Special Sub Court,
Motor Accident Claims Tribunal,
Tirunelveli.



Copy to

The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.N.Sivakumar, Advocate Sr.No.74930
+1cc to Mr.R.Krishnan, Advocate Sr.No.75105

BALA

VB/KAK/SAR1/28.08.2018/4P/6C

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