BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1328 of 2013

G.Lakshmanan ... Appellant/Claimant

Vs.

1.Murugan

2.The United India Insurance Co. Ltd.,
Rep' thro' its Divisional Manager,
Jeeva Jothy Buildings, Salai Road,
Dindigul – 624 001. .. Respondents / Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 31.10.2011 made in M.C.O.P.No.89 of 2007 on the file of Motor Accident ClaimsTribunal (Additional Sub Court), Dindigul.

For Appellant : Mr.VS.Karthi
For Respondent No.1 : Mr.A.Hariharan
For Respondent No.2 : Mr.J.S.Murali

JUDGMENT

This civil miscellaneous appeal is filed against the judgment and decree passed by the learned Additional Sub Judge, Motor Accident Claims Tribunal, Dindigul, in M.C.O.P.No.89 of 2007, dated 31.10.2011.

2. Heard the learned Counsel appearing for the respective parties and perused the records carefully.

3. It is a case of injury and the tribunal has awarded a sum of Rs.19,525/- as compensation and aggrieved over the same, the appellant/injured is on appeal before this Court.

4. Though several grounds are raised in the memorandum of grounds, the appellant/injured would submit that since a valid policy is in force, at the time of accident, the tribunal ought not to have fastened the liability on the first respondent, who is the owner of the offending vehicle, instead of the second respondent/ insurance company to pay the compensation. Therefore, he prays for interference of this Court.

5. According to the second respondent/insurance company, the driver of the offending motorcycle was not in possession of a valid driving licence at the time of accident. They had issued notices to the first respondent to produce the driving licence, however, he did not turn up. According to the second respondent/insurance company, as there is a violation of policy norms, they are not liable to pay compensation.

6. Perusal of records show that R.W.2/the official from Regional Transport Office, during chief examination, has deposed that no driving licence was issued to the address mentioned in the summons, which is said to be that of the first respondent.

7. It is an admitted fact that the second respondent/insurance company has taken steps, by sending notice to the first respondent to produce the licence. Proof of service was also deposited before the tribunal. However, he did not turn up, for which, the second respondent/insurance company should not be found fault with. But, even if the second respondent/insurance company is able to discharge the burden of proof that the offending vehicle was driven by an unlicensed person, i.e., there is a violation of policy condition and that it is the owner, who is liable to pay the compensation, this Court is of the view that ends of justice would be met, if pay and recovery is ordered.

8. In this connection, this Court feels it apt to mention the judgment in the case of ORIENTAL INSURANCE COMPANY LIMITED V. NANJAPPAN AND OTHERS reported in 2004(2) CTC 464, wherein, the mode of recovery has clearly been 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."

9. In the light of the authoritative pronouncement of the judgment cited supra, pay and recovery is ordered in the case on hand. The second respondent / Insurance Company is directed to deposit the entire award amount with interest @ 7.5% within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any, and on such deposit the appellant/injured is permitted to withdraw the deposited amount, with accrued interests and costs, without filing any formal petition before the Tribunal. The second respondent / Insurance Company is at liberty to recover the amount from the first respondent as per the decision of the Hon'ble Supreme Court in Nanjappan Vs. Oriental Insurance Company Limited and Others, reported in 2003(1)L.W. 77.

10. This Civil Miscellaneous Appeal is partly allowed in the above terms. No costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To
The Additional Sub Judge,
Motor Accident Claims Tribunal,
Dindigul.

Copy to:
The Section Officer,
VR.Section
Madurai Bench Of Madras High Court,
Madurai.(2 Copies)

+1CC to Mr.V.S.Karthi, Advocate in SR.No.70496.
+1CC to Mr.J.S.Murali, Advocate in SR.No.70271.

PJL
DS/PN/SAR-2 :18.07.2018: 3P/6C

C.M.A(MD)No.1328 of 2013
27.06.2018