BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.970 of 2024
and
C.M.P(MD)No.10312 of 2024

Divisional Manager,
National Insurance Company Limited,
Divisional Officer Office,
Manojiyappa Road,
Thanjavur D.M.Munsif & Town
... Appellant/2nd Respondent

Vs.

1.Vijayalakshmi
2.Saraswathi
3.Ramu ...1to3 Respondents/Petitioners
4.Chelliah ...4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside or modify the order of the learned Tribunal in MCOP No.64 of 2009 dated 18.09.2010 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.2, Pattukottai.

For Appellant : Mr.J.S.Murali

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal and also aggrieved by the direction that the appellant has to pay and recover the compensation, since the driver/owner had violated the policy condition by driving the vehicle without a valid licence.

2.The learned counsel appearing for the appellant submitted that the quantum of compensation awarded by the Tribunal is excessive.

3.On perusal of the award and the reasons given for awarding the compensation of Rs.3,34,000/-, this Court finds that there is no reason to interfere with the award passed by the Tribunal. The Tribunal had adopted the monthly notional income at Rs.3,000/- for the accident that took place in the year 2009, considering the avocation and age of the deceased. Thus, the Tribunal awarded Rs.3,12,000/- under the head loss of income and Rs.22,000/- under other conventional heads. The appellant was unable to point out any infirmity in the said award. Therefore, the award of the Tribunal is just and reasonable and no interference is called for.

4.The Tribunal found that the insured had violated the policy condition by driving the vehicle without a valid licence. It is well settled that in such cases, the Insurance Company can be directed to pay and recover the compensation from the insured. Therefore, no interference is called for in the said finding as well. It is open to the appellant/Insurance Company to pay the entire compensation to the respondents 1 to 3/claimants and recover the same from the fourth respondent, the insured, in the manner known to law.

5.The learned counsel for the appellant submitted that the Hon'ble Supreme Court in ***Oriental Insurance Co., Ltd.,-Vs- Shri Nanjappan & Ors.,*** reported in ***2004(1) TN MAC (SC) 211*** had framed guidelines regarding the manner in which the

Insurance Company could recover compensation from the insured. The relevant portion of the judgment reads as follows:

> ***8.****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 respondents-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 order as to costs."

The above observations are self explanatory and it is needless to say that the appellant shall adhere to the above guidelines while recovering the money from the insured.

6.In view of the above, this Civil Miscellaneous Appeal is disposed of. The appellant/Insurance Company shall deposit the entire award amount to the credit of MCOP No.64 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.2, Pattukottai, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit being made, the claimants are entitled to withdraw their shares as apportioned by the Tribunal, less the amount already withdrawn if any, by filing an appropriate petition before the Tribunal. No costs. Consequently, connected miscellaneous petition is also closed.

07.08.2024

NCC:Yes/No
Index:Yes / No
Internet:Yes / No

SUNDER MOHAN, J.

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To

1.The Motor Accidents Claims Tribunal,
Additional District Court,
Fast Track Court No.2,
Pattukottai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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