
(2016) 11 MAD CK 0073
In the Madras High Court
Case No : C.M.A (MD) No. 812 of 2010

Oriental Insurance Co. Ltd.

APPELLANT

Vs

K. Thambithurai

RESPONDENT

Date of Decision : 04-11-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)(a)(ii)

Citation : (2016) 4 ACC 905 : (2017) 1 TAC 633

Hon'ble Judges : Mr. S.M. Subramaniam, J.

Bench : Single Bench

Advocate : Mr. K. Bhaskaran, Advocate, for the Appellant; Mr. B. Saravanan, Advocate, for the Respondent No. 1; No appearance, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Mr. S.M. Subramaniam, J. - The accident took place on 11.11.2006 at about 13.45 hours, at Vaniyambadi - Krishnagiri Road near Duroflex Mattresses Company and it is a case of grievous injury and the claimants sustained multiple injuries all over their bodies.

2. The claim petitions were filed in M.C.O.P. Nos. 240 to 242 of 2007 before the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Karur. Considering the facts and circumstances of the case, the Tribunal awarded the total compensation of Rs. 72,300/- (Rupees Seventy Two Thousand and Three Hundred only); Rs. 76,000/- (Rupees Seventy Six Thousand only) and Rs. 1,29,600/- (Rupees One Lakh Twenty Nine Thousand and Six Hundred only) to the respective claimants.

3. The learned Counsel for the appellant in all the appeals contended that the Tribunal has made a categorical finding that the driver of the offending vehicle was not having a valid driving licence to drive the lorry and this fact was not disputed by the claimants during the trial before the Tribunal and further that the appellant/second respondent Insurance Company was directed to pay the

compensation to the claimants and recover the same from the owner of the offending vehicle and accordingly, "pay and recovery" was ordered by the Tribunal and the same is to be confirmed in these appeals also in view of the principles laid down in the decision of the Honourable Supreme Court in *Oriental Insurance Co. Ltd., v. Nanjappan and others* reported in (2004) 13 Supreme Court Cases 224.

4. The learned Counsel for the first respondent in all the appeals is unable to rebut the ground raised by the learned Counsel for the appellant that it is a case of "pay and recovery" and accordingly, the common award passed by the Tribunal is to be confirmed.

5. Heard the learned Counsel for the appellant Insurance Company and the learned Counsel for the first respondent in all the appeals and also perused the materials available on record.

6. In the instant case, as rightly contended by the learned Counsel appearing for the appellant Insurance Company, it has been established before the Tribunal that the driver of the vehicle was not having a valid driving licence and hence, this Court is of the view that it is a case of "No Driving Licence".

7. It is settled law that though the Insurance Company established violation of the policy condition and in respect of the claim made by the third parties, the Insurance company has to first satisfy the award and recover the same from the owner of the vehicle.

8. In the case on hand, the Tribunal after considering the facts and circumstances of the case and also relying upon the decisions of the Hon'ble Apex Court directed the appellant Insurance company to pay the award amount and recover the same from the owner of the vehicle.

9. In *Oriental Insurance Co. Ltd., v. Nanjappan and others* reported in (2004) 13 Supreme Court Cases 224, the Honourable Supreme Court has held 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 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 realisation 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."

10. In the light of the ratio laid down by the Honourable Supreme Court in the above decision, this Court does not find any illegality or infirmity in the common award passed by the Tribunal. Accordingly, these appeals fail.

11. In the result, C.M.A(MD)Nos. 812 to 814 of 2010 are dismissed, confirming the common award in M.C.O.P. Nos. 240 to 242 of 2007 dated 18.11.2009, passed by the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Karur. The appellant Insurance Company is directed to deposit the respective entire award amounts with accrued interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment.

On such deposit, the respective claimants are permitted to withdraw the same forthwith. Further, the appellant Insurance Company is at liberty to recover the award amount from the insured as per the law laid down by the Honourable Supreme Court in Nanjappan's case (cited supra). No costs. Consequently, connected miscellaneous petitions are dismissed.