



CMA.No.3609 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.06.2023

PRONOUNCED ON : 18 .07.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

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The New India Assurance Company Limited
Ettumanoor

Appellant

Vs

1. Libin Ram (Minor), by mother Soudhamini K.
2. Subramani
3. K.K.Rameez

4. The Oriental Insurance Company Limited, Kannur

5. Babu Ansari

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 09.09.2014, made in MCOP.No.10 of 2010, by the Subordinate Judge (MACT) Mahe.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.M.J.Vijayaraaghavan-R4
RR1to3 and 5-No Appearance

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 09.09.2014, made in MCOP.No.10 of 2010, by the Subordinate Judge (MACT) Mahe.
2. The 1st Respondent herein, has filed the claim petition before the Tribunal,



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seeking a compensation of Rs.2,00,000/- on various heads, for the injuries sustained by him, in a motor road accident, which took place on 14.10.2008, when he was walking on the left side of the road, an Innova Car dashed against him. The 2nd Respondent and the 3rd Respondent, driver of the offending Car remained exparte. The claim petition was resisted, on various grounds, by the Appellant Insurance Company, 4th Respondent Insurance Company and the 5th Respondent, by filing separate counters. On the side of the claimant, PW.1 was examined and Ex.P1 to Ex.P5 were marked. On the opposing side, RW.1 was examined and Ex.R1 to R4 were marked.

3. Finding that the claimant sustained injuries in the alleged motor road accident due to the rash and negligent driving of the driver of the offending Car, the Tribunal has awarded a total compensation of Rs.98,985/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be payable by the Appellant Insurance Company, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Studies	10000
2	Extra Nourishment	3000
3	Medical Expenses	8985
4	Transportation Expenses	2000
5	Pain and Suffering	25000
6	Permanent Disability	40000
7	Humiliation due to disfigurement	10000
Total Compensation		98985

Aggrieved by the same, this appeal has been filed by the Appellant/ Insurance Company.

4. This Court heard the learned counsel on either side, considered their



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submissions and also perused the entire materials placed on record.

5. There is no quarrel over the negligence aspect and the quantum of compensation, as determined by the Tribunal. However, the dispute is only with regard to liability to pay the compensation. Hence, the details regarding the manner of the accident and quantum of compensation arrived at by the Tribunal need not be narrated once again. As such, the impugned judgement in respect of the quantum of compensation and negligent aspect is confirmed.
6. According to the 1st Respondent/ claimant, the Innova car bearing Reg.No.KA-05-AB- 4959 driven by its driver in a rash and negligent manner, dashed against him, due to which he sustained injuries and the 2nd Respondent is the owner of the Car and the 3rd Respondent is its driver and a case in Cr.No.87/08 was registered against its driver.
7. In so far as the question of liability is concerned, according to the learned counsel for the Appellant Insurance Company, the Tribunal ought to have exonerated the Appellant from liability, as the Car bearing Reg.No.KL-05-V-3300 owned by the 5th Respondent and insured with the Appellant was stolen on 09.08.2008 and a fake Reg.No.KA-05-AB-4959 was fitted in the Car and a fresh insurance policy was taken in the name of the 2nd Respondent from the 4th Respondent Insurance Company and the driver was not having a valid driving licence.
8. According to the 4th Respondent Insurance Company, the original registration number of the offending Car was KL-05-V-3300 and the 5th



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Respondent is the real owner of the Car and the Appellant is the actual insurer of the car. The offending Car involved in the accident was a stolen vehicle, with a fake Reg. No.KA 05 AB 4959 and a fake insurance policy allegedly obtained from the 4th Respondent Insurance Company. Since there was no valid insurance policy issued by them to the offending vehicle and the offending Car with original Reg.No.KL 05 V 3300 was insured with the Appellant, the 4th Respondent is not liable to pay the compensation.

9. The claimant was a minor, aged 11 years old at the time of the accident. The mother of claimant was examined as PW.1. Ex.P1 is the First Information Report and Ex.P2 is the accident register cum wound certificate. An Officer of the 4th Respondent Insurance Company was examined as RW.1, who has deposed that the offending Car was a stolen vehicle and its real Registration Number is KL-05-V-3300 and it belonged to the 5th Respondent and insured with the Appellant herein and that on verification, it was found that the Car was fitted with fake number plate bearing Reg. No.KA 05 AB 4959 and a fake policy of the 4th Respondent Insurance Company was created.

10.Ex.R1 is the insurance policy issued by the Appellant to the 5th Respondent for the Innova Car, bearing Reg.No.KL 05 V 3300. Ex.R2 is the final report filed in Cr.No.87 of 2008 against the driver of the offending Car, the 3rd Respondent and Ex.R3 is the certified copy of the judgement in CC.No.11 of 2010, by which, the driver of the car was also punished. On the side of the Appellant, Ex.R4 fake insurance policy allegedly issued by the 4th



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Respondent Insurance Company was marked through RW.1, an Officer of the 4th Respondent Insurance Company. This Court finds no contra evidence, both documentary and oral, let in by the Appellant Insurance Company.

11. In so far as the contention of the 4th Respondent Insurance Company that the 4th Respondent is not liable to pay the compensation is concerned, it is pertinent to point out that it is the contention of the Appellant even before the Tribunal that even though the vehicle was insured with the Appellant, since the driver of the offending vehicle did not possess a valid driving licence, the Appellant is not liable to pay the compensation and hence, the theory of pay and recovery ought to be applied, but it is the contention of the 5th Respondent that since the vehicle was stolen and driven without his knowledge, he is not liable to pay the compensation and hence, the doctrine of pay and recovery cannot be applied.

12. It is seen from the evidence that the Car involved in the accident was duly insured with the Appellant Insurance Company at the time of the accident and the vehicle was stolen from its real owner, 5th Respondent and was driven by the 3rd Respondent with a fake Registration number and a fake Insurance policy, obtained from the 4th Respondent Insurance Company, at the time of accident, as stated above. Thus, it established that the 5th Respondent is the real owner of the offending vehicle and the Appellant is its insurer.

13. In order to apply the doctrine of pay and recovery, the Insurance Companies are, however, with a view to avoid their liability towards insured, must not only



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establish the available defence raised by them, but must also establish that there was breach on the part of the owner of the vehicle, by concrete evidence. In the case on hand, this Court finds no such contra evidence to prove breach of policy conditions on the part of the 5th Respondent, real owner of the offending Car.

14. In the case on hand, it is established that the 5th Respondent is the owner of the offending vehicle and the Appellant is the insurer of the offending vehicle. Considering the entire evidence and in the absence of contra evidence let in by the Appellant Insurance Company, the Tribunal has rightly held that when the Insurance Policy allegedly issued by the 4th Respondent Insurance Company is created and fake, the 4th Respondent Insurance Company is not liable to pay the compensation. However, it was held by the Tribunal that on the date of accident, the vehicle with real Registration Number was validly insured with the Appellant Insurance Company and the Appellant Insurance Company has failed to prove that the 5th Respondent, real owner of the vehicle was guilty of breach of policy conditions and hence, he is not liable. Holding so and relying on the various decisions of the Honourable Supreme Court, the Tribunal has rightly held that the Appellant cannot escape from the obligation to indemnify the insured/owner, 5th Respondent and the doctrine of pay and recover cannot be made applicable to the case on hand and accordingly, it made the Appellant Insurance Company liable to pay the entire compensation with interest, by the impugned judgement, which does not



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warrant any interference by this Court.

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15. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The Appellant/ Insurance Company is directed to deposit the entire compensation, with interest as ordered by the Tribunal, after deducting the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit is being made, the claimant is entitled to withdraw the same, by filing proper application. No costs.

18.07.2023

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Srcm

To

1. The Subordinate Judge (MACT) Mahe
2. The Record Keeper, VR Section, High Court, Madras



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A.A.NAKKIRAN, J.

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Pre-Delivery Judgement in
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