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C.M.A.No.12 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.04.2021

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.12 of 2021

HDFC ERGO General Insurance Company Ltd.,
New No.528, Old No.559,
2nd Floor, Anna Salai,
Teynampet, Chennai- 600 018.

... Appellant

Vs.

1.Premalatha
2.Elangovan

3.M.Jayalakshmi

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, praying to set-aside the Decretal order and Award dated 02.01.2020 made in M.C.O.P.No.2038 of 2017 on the file of the Motor Accidents Claims Tribunal (Small Causes Court II), Chennai.

For Appellant : Mr. Somasundar N
For RR1 & 2 : Mr.K.Varadhakamaraj
For R3 : No Appearance



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JUDGMENT

The appeal is filed challenging the Award and Decree dated 02.01.2020 made in M.C.O.P.No.2038 of 2017 on the file of the Motor Accidents Claims Tribunal (Small Causes Court II), Chennai.

2. The Insurance company has filed the appeal challenging their liability to pay the compensation awarded to the respondent/ claimants.

3. The parents of the deceased minor Abishek who died in a motor accident which took place on 08.09.2016, have filed the claim petition claiming a sum of Rs.20 lakhs as compensation before the Claims Tribunal.

4. The negligence and quantum of compensation are not disputed by the appellant/Insurance Company. The only point raised in this appeal is whether the appellant/Insurance Company can be made liable to pay the compensation amount, on a fake policy.

5. The learned counsel for the appellant submitted that the policy produced by the claimants and marked as Ex.P.7 was a fake policy. The learned counsel submitted that the bar code of the appellant/Insurance Company was



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manipulated and the fake policy was created. According to the appellant/Insurance Company, as the claim is based on a fake policy, the appellant Insurance Company is not liable to pay compensation and therefore, the direction of the Claims Tribunal directing the appellant/ Insurance Company to pay the compensation is untenable.

6. The learned counsel submitted that inspite of sufficient evidence being let in by the Insurance Company both oral and documentary, the Tribunal, in total ignorance of the same, mulcted the liability on the Insurance Company. The learned counsel therefore submitted that the appeal deserves to be allowed.

7. The learned counsel for the 1st and 2nd respondents on the other hand submitted that the respondents/claimants were third parties and as the Motor Vehicles Act was a beneficial Legislation, there is absolutely no infirmity in the Claims Tribunal directing the appellant/Insurance Company to pay the compensation. The learned counsel therefore submitted that there are absolutely no merits in the appeal and the same deserves to be rejected.

8. I have heard both the learned counsels and perused the materials placed on record.



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9. The learned counsel for the appellant relied on Ex.P.7 and Ex.R.2, to establish that the policy produced by the claimants was a fake policy. From Ex.P.7 filed by the claimant's, it is seen that the Registration Number of the vehicle insured was TN-57-5189, the period of insurance was 28.07.2016 to 27.07.2017, the name of the insured was noted as Mrs.N.Jayalakshmi and the policy number was shown as 2317201614979000000. Whereas the scanned copy of the bar code embossed in the claimants policy copy shows the policy number as 2317201314184000000, the policy holder's name as K.Agilan the registration number as TN-32-D-5611 and the period of insurance as 09.02.2016 to 08.02.2017. The original policy of the scanned bar code was produced as Ex.R.2. The Tribunal, inspite of referring to the above said facts, rejected the appellant's contention on the premise that the Insurance Company had not taken any stringent action against the persons behind the fake policy, and the innocent claimants who are third parties, should not suffer. Therefore, the Tribunal directed the appellant/ Insurance Company to pay the compensation.

10. In my view, the Tribunal erred in mulcting the liability on the appellant Insurance company. The contract of insurance is a contract *Uberrimma fide* (i.e. Contract in good faith) and therefore, the claimants who



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seek to mulct the liability on the Insurance Company, should establish that there was a valid subsisting policy and that the Insurance Company was bound to indemnify the owner. The Tribunal failed to note that the liability was contractual in nature and in the absence of valid policy, the Insurance Company could not be called upon to indemnify those with whom it had no contractual liability.

11. It is very unfortunate that inspite of cogent evidence being produced by the Insurance Company before the claims Tribunal, the Tribunal, on unsustainable grounds, refused to accept the same and passed on the liability, on the Insurance Company. The Tribunal was carried away by irrelevant considerations like, in action on the part of the Insurance Company to bring to book the persons behind the fake policy. In my view, the said reason cannot be a ground to mulct the liability on the Insurance Company, which was not bound to indemnify the insured in the absence of a legally valid and subsisting policy.

12. The above view of mine is fortified by Division Bench Judgment of this Court in the case of *Shriram General Insurance Co. Ltd., Vs. R.Maheswari* reported in 2018(2) TN MAC 215(DB), wherein it was held as follows:-



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“12. We are of the considered view that the only possible conclusion that could be arrived in this incontrovertible fact situation is that the photocopy of the Cover Note bearing S.No.402264 (Ex.P3) produced by the First to Third Respondents was fake and would not suffice to fasten the liability on the Appellant to indemnify the Fourth Respondent. In other words, the Fourth Respondent, as the owner of the vehicle, was alone responsible to compensate the First To Third Respondents and the Appellant could not be fastened with any such liability in this case.

13. We are also not in a position to countenance the submission made by the learned Counsel for the First to Third Respondents to apply the principle of pay and Recover against the Appellant in this case for the obvious reason that the said principle would arise for consideration only in cases, where there has been a valid and enforceable Policy of Insurance and there has been breach of the terms and conditions thereof by the Owner of the vehicle. If the same is extended to cases where there is no Policy of Insurance at all in force on the date of accident as in the present one, it would lead to miscarriage of justice, that had not even been contemplated while evolving that salutary doctrine.”



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13. The learned counsel for the respondents, on the other hand relied on a Judgment of the Division Bench of this Court in the case of *The National Insurance Company Limited, Madras v. M.Mandan & Another* reported in 2004 (1) TN MAC 247, wherein, the Hon'ble Division Bench taking note of the forged insurance policy, held that when an agent had committed fraud, the principal was liable for the fraud committed by its agent. Even though the said Judgment refers to a forged policy, the facts of that case are completely different from the facts in the present case, in the sense that, in that case, the agent of the Insurance Company had collected the premium from various parties and did not remit the same in the Insurance company. The Hon'ble Division Bench, on the admitted position that Ganesan therein was the agent of the Insurance Company, that he was authorised to receive premium, that he collected the premium from the insured but failed to remit the premium to the Insurance Company and that he issued forged policy, held that as Ganesan was the agent of the Insurance Company, as the principal, the Insurance Company was bound to indemnify the insured.

14. In the Judgments of this Court in the case of *Divisional Manager, New India Assurance Co.Ltd., Vs. Kasiammal & Others* reported in 2014(1)



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TN MAC 77 (Mad) and in the case of Oriental Insurance Company Ltd. Vs.

R.Mahendran reported in 2017 ACJ 1212 it is laid down that the burden is on the claimants to prove that there was a valid and subsisting policy on the date of the accident. It is trite in law that the burden lies only on the claimants to prove that the offending vehicle was covered by a valid policy on the date of the accident. In the present case, the claimants have failed to discharge the burden cast on them, but the Insurance Company has proved that the policy produced by the claimants was a fake policy and therefore, it was not liable to indemnify the owner.

16. In view of the above discussion, I am of the view that the finding of the Tribunal on the issue of liability is un-sustainable and therefore, the same is set aside and the Award of the Tribunal on the issue of negligence and quantum, is confirmed. The claimants are in any event entitled to recover the compensation amount from the owner of the offending vehicle. The appeal is accordingly allowed. There shall be no order as to costs.

13.04.2023

dsn

Index:Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

1.The learned II Judge, Motor Accidents Claims Tribunal,
Small Causes Court II, Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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N.MALA.J.,

dsn

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