IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.591 of 2015
and
M.P.No.1 of 2015

The Branch Manager,
National Insurance Co.Ltd.,
No.225, Gandhi Road,
Kanchipuram.
...Appellant/2nd Respondent

vs.

1.Sarangapani
2.Sekar
3.Gangaimmal
4.Vanith
5.Lakshmi
6.Arumugam
7.Ellammal
8.Siva ..
Respondents 1to8/Petitioners 1to8
9.R.S.Babu ..Respondent/1st respondent

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree dated 11.3.2013 passed in M.C.O.P.No.5 of 2011, on the file of the Motor Accident Claims Tribunal/I Additional District Court, Tindivanam.

For Appellant : Mr.S.Vadivel

For respondents 1 to 8 : Mr.U.M.Ravichandran

For 9th respondent : Mr.A.K.Kumarasamy

JUDGMENT

This Appeal is directed against the Award and Decree dated 11.3.2013 made in M.C.O.P.No.5 of 2011 by the Motor

Accident Claims Tribunal/First Additional District Court, Tindivanam.

2. Aggrieved by the impugned Award in directing the appellant Insurance Company to deposit the award amount and recover the same from the ninth respondent herein, the present appeal is filed by the appellant. The learned counsel appearing for the appellant Insurance Company would submit that the Tribunal has miserably failed to consider the vital fact that the cheque issued by the owner of the offending vehicle, namely, Tata Sumo bearing Regn.No.TN 23 J 1688 on 5.7.2005, towards premium, was sent to bank for collection and the same was returned by the banker on 19.7.2005 vide Ex.R3. Therefore, the appellant herein cancelled the Insurance Policy on 19.7.2005 and the same was intimated to the owner of the Tata Sumo and the RTO office concerned, on 19.7.2005 itself vide Exs.R4 and R5 and they received the same vide Ex.R6. Therefore, it is evident that the accident had occurred subsequent to 19.7.2005 i.e. on 24.7.2005. The Tribunal, ignoring the fact that the Insurance Company had cancelled the Insurance Policy much before the accident that took place on 24.07.2005, held that the owner of the Tata Sumo shall deposit the award amount within a month, failing which the appellant Insurance Company shall deposit the amount into court and recover the same from the owner of the Tata Sumo/ninth respondent herein. The Tribunal has fastened the liability on the appellant Insurance Company without any basis and therefore, such direction issued in the impugned Award is liable to be set aside. In support of his submission, he also placed reliance on the judgment in United India Insurance Co.Ltd., Vs. Laxmamma and others reported in 2012 (1) TN MAC 481 (SC), wherein it has been held that if the insurer had cancelled the policy and sent intimation to the owner of the vehicle/insured, then the insurer cannot be held liable to satisfy the award. Although this judgment was rendered by the Apex Court on 17.4.2012 much before the impugned judgment was passed by the Tribunal, a serious error has been committed by the Tribunal contrary to the law laid down by the Apex Court. Therefore, the direction given to the appellant Insurance Company to deposit the award amount, in the event of non-depositing by the owner of the offending vehicle - Tata Sumo, is liable to be set aside.

3. Per contra, the learned counsel appearing for the ninth respondent/owner of the vehicle, namely, Tata Sumo Car bearing Reg.No.TN 23 J 1688 would submit that the contention of the learned counsel appearing for the Insurance Company that the Tribunal erred in not considering the vital fact that the cancellation of the Insurance Policy had taken place on 19.7.2005 immediately after the dishonour of the premium cheque by the banker on 19.7.2005, which is much before the accident that took place on 24.7.2005, is absolutely far from acceptance.

The reason is that although the cheque issued by the ninth respondent, namely, owner of the vehicle dated 5.7.2005 was presented for collection before the bank on 7.7.2005, it was returned only on 19.7.2005 by the banker. Thereafter, the intimation was sent by the appellant/Insurance Company to the owner of the vehicle and also the RTO concerned on 19.7.2005. But, it is to be noted herein that the said intimation was not received by the owner when the accident had taken place on 24.7.2005. As a matter of record, the cancellation of the Insurance Policy of the vehicle involved in the accident, namely, TATA Sumo bearing Reg.No.TN 23 J 1688 took place on 19.7.2005, and the intimation sent by the appellant Insurance Company was received by the owner of the vehicle only on 25.7.2005. Therefore, the contention of the appellant Insurance Company that since the accident had taken place on 24.7.2005 after the cancellation of the Insurance Policy on 19.07.2005, the appellant Insurance Company is not liable, is untenable, since the owner of the vehicle had the knowledge of cancellation of the Insurance Policy only on 25.7.2005. In support of his contention, the learned counsel appearing for the owner of the vehicle, has relied upon the Judgment of the Apex Court in the case of New India Assurance Co.Ltd., Vs. Rula reported in AIR 2000 SC 1082 to contend that if on the date of accident, there was a policy of Insurance in respect of the vehicle in question, the third party would have a claim against the insurance company and the owner of the vehicle would have to be indemnified in respect of the claim of that party and the subsequent cancellation of Insurance Policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party.

4. Heard the learned counsel appearing for the parties and perused the materials available on record.

5. I find force in the submission made by the learned counsel appearing for the owner of the vehicle in question. The principles laid down in the case of New India Assurance Co.Ltd., Vs. Rula reported in AIR 2000 SC 1082 is squarely applicable to the present case. In this context, it is necessary to extract the relevant portion of the judgment.

> "11. This decision, which is a 3-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the Insurance Policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party

which had accrued on the issuance of the Policy on the date on which the accident took place. If, on the date of accident, there was a Policy of Insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of Insurance Policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party."

6. The above extract is axiomatic. In the present case, the date of accident was on 24.7.2005. The appellant Insurance Company had cancelled the Insurance Policy on 19.07.2005 and such an intimation was received by the owner of the vehicle only on 25.07.2005. Therefore, this Court has no other option except to concur with the approach adopted by the Tribunal holding that the Insurance Company cannot be absolved from the third party liability. Moreover, the Tribunal has also rightly applied the principles of "pay and recover". Hence, this Court is of the considered opinion that the appellant Insurance Company cannot have any grievance as it has a remedy to have it reimbursed from the owner of the vehicle after making deposit of the award amount. For the reasons stated above, the submissions made on behalf of the appellant Insurance Company cannot be countenanced. Accordingly, the Appeal fails and the same is dismissed. No costs. The connected Miscellaneous Petition is closed.

7. The appellant Insurance Company is directed to deposit the entire award amount before the Tribunal along with interest and costs, less if any amount already deposited, within a period of four weeks from the date of receipt of a copy of this order. It is always open for the appellant Insurance Company to recover such amount from the owner of vehicle in question based on the principles laid down by the Hon'ble Supreme Court in the case of Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others reported in 2004 (2) CTC 464.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

asvm

To

1. The Motor Accident Claims Tribunal/
First Additional District Judge,
Tindivanam.

2. The Record Keeper,
Vr Section, High Court, Madras.

+1cc to Mr.E.M.Ravichandran, Advocate, S.R.No.66808
+1cc to Mr.S. Vadivel, Advocate, S.R.No.66575
+1cc to Mr.A.K. Kumarasamy, S.R.No.66569

RSY(CO)
EU(09/05/2016)

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and
M.P.No.1 of 2015