IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2015

CORAM

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

C.M.A.No.1529 of 2009
and
M.P.No.1 of 2009

United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai-2. ...Appellant/2nd Respondent

vs.

1.A.Sudalaimani ...1st Respondent/Claimants

2.S.Jeyaraman

3.K.Murugan ...Respondents 2 & 3/Respondents 1 & 3

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 14.12.2007 made in M.C.O.P.No.274 of 2004 on the file of the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.N.Mala

For Respondents : Mr.A.Shanmugaraj,
for R.1.

JUDGMENT

The second respondent insurance company is the appellant herein.

2. The present appeal is filed by the insurance company questioning the correctness of the impugned award mainly on the ground that the insurance company is not liable to indemnify the owner of the vehicle for want of insurance policy on the date of the accident.

3. The facts that the vehicle involved in the accident was insured vide Ex.R.1 for one year between 7.3.2002 and mid-night of 6.3.2003 and the accident, out of which the claim has arisen, occurred on 17.3.2003 are not denied. The claimant has come forward with the claim petition against the owner of the vehicle and the insurer claiming compensation of Rs.2,00,000/-. The claimant has, in column 16 of the claim petition, furnished the policy number as well as the Branch of the insurance company from where policy was taken. The first respondent owner did not appear and contest the claim petition before the Tribunal. The second respondent insurer has, in paras 4 and 5 of the counter affidavit, only denied that the first respondent is the owner of the vehicle and the second respondent is the insurer and the vehicle which met with an accident on 17.3.2003 was validly insured with them at the time of accident. It is not stated in the counter that the insurance policy was for a period of one year and the same was not renewed on the date of accident. Though the claimant has in column (16) of his claim petition, furnished particulars regarding the insurance policy and the Branch name of the insurance company, there was no verification and no specific denial is made in the counter statement. On the basis of such verification, the claimant-P.W.1 was not cross examined on this aspect on behalf of the second respondent insurance company.

4. It may be true that the Assistant and Assistant Manager of the second respondent insurance company of Nainiappa Naicken Street Branch, while being examined as R.W.1 and R.W.2, denied valid insurance coverage for the vehicle on the date of accident. Though it has been categorically deposed by R.W.1 and R.W.2 that the policy was not renewed for the vehicle concerned, neither of them produced any record from the concerned branch of the second respondent insurance company to the effect that the policy was not renewed after 6.3.2003. Both R.W.1 and R.W.2, except stating that on verification it was found that the policy was not renewed, have failed to explain the manner in which the same was verified and they have failed to produce any communication in this regard to and from the concerned Branch.

5. As rightly argued by the learned counsel for the claimant, the claimant may not be in a position to make any verification in this regard. The two competent persons to speak about the said fact are the owner of the vehicle and the insurer. When the owner remained exparte, it is the bounden duty of the insurance company to prove the non-renewal of the policy in order to deny the liability. Though the second respondent insurance company could have easily produced the particulars in this regard, they have failed to do so. Since they failed to prove the non-renewal of the policy in the manner known to law, the principle laid down by the Division Bench of our High Court in the decision reported in 2004 ACJ 727 - United India Insurance Co. Ltd. v. R.Venkatesan and another is squarely applicable to the facts of this case.

6. In the case decided by the Division Bench, the policy number and the address of the branch were given in the claim petition. The Branch Code was not given. The insurance company denied the valid policy coverage on the date of accident. Admittedly, the insurance company has not made any search to verify the records to find out as to whether the policy mentioned was actually issued by them or not and on their failure to do so, the Division Bench has held that it would not have been difficult to search and produce evidence to the effect that no policy was issued for that vehicle and on their failure of the insurance company to discharge its burden, the insurance company cannot be permitted to wriggle out of its liability. The said decision is applicable to the facts of the present case in full force and the plea of denial of the liability raised herein is, hence liable to be rejected. The learned counsel appearing for the insurance company has not made out any other valid ground to interfere with the correctness of the impugned award on merits. As such, the insurance company is disentitled to get any relief in this CMA.

7. In the result, the civil miscellaneous appeal is dismissed. The Insurance Company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount, if any, that has already been deposited by them, to the credit of M.C.O.P.No.274 of 2004 on the file of the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount, with the

accrued interest and costs, less the amount, if any, that has already been withdrawn by him, on due cheque petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

sbi

To

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

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

1 CC to Mr.A.Shanmugaraj, Advocate SR.No. 42351

C.M.A.No.1529 of 2009

KGK (CO)
PSI (15.10.2015)