

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2484 of 2010

The Oriental Insurance Co.Ltd.,
Divisional Office No.1
Katpadi Road, Vellore-4

.. Appellant

-Vs-

1. R.Mahendran

2. K.Deepa

(2nd Respondent ex parte in lower Court

Notice may be dispensed with)

.. Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 23.06.2009 made in M.C.O.P.No.123 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.2, Ranipet.

For Appellant :: Ms.C.Harini for
Mr.N.Vijayaraghavan

For Respondents :: Mr.C.Prabakaran for R1
R2-ex parte

JUDGMENT

M/s Oriental Insurance Company Limited, Vellore, having suffered the impugned award at the hands of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.2, Ranipet in M.C.O.P.No.123 of 2008 dated 23.6.2009 awarding a sum of Rs.55,186/-, as against the claim of Rs.3,00,000/-, with interest at the rate of 6% per annum from the date of claim petition till the date of decree, has brought this appeal, on the sole ground that the Tribunal has wrongly saddled the liability on the part of the appellant insurance company, when there was no valid insurance policy on the date of accident i.e., on 17.8.2005. Adding further, the learned counsel for the appellant submitted that the Tribunal has also committed a fundamental mistake to see that the initial burden to provide the particulars of insurance viz., the number of the insurance policy, period of insurance etc., lies with the injured claimant. This aspect has been properly restated by this Court

in C.M.A.No.78 of 2000 dated 11.9.2006 (United India Insurance Company Ltd., rep.by its Branch Manager, Karaikkal v. Sudhakar-Minor rep.by his father and natural guardian Mr.Ramayyan and another), making it clear that unless the policy details are furnished to the insurer by the claimant, it is impossible for the insurer to produce the policy before the Tribunal. In the present case also, the second respondent, the owner of the vehicle, remained ex parte. However, the appellant insurance company has produced all the available evidence taking a specific ground that the vehicle involved in the accident was not at all insured with the appellant. The officer from the insurance company, while entering the witness box, has also established the factual aspect with regard to the non-insurance of the vehicle that had been involved in the accident. Therefore, when the insurance company, the appellant herein had appeared before the Tribunal and adduced sufficient evidence to show that the vehicle involved in the accident was not covered by any policy, the Tribunal, finding that no policy details were furnished by the injured, ought not to have allowed the claim petition in favour of the claimant. She has also placed reliance on the decision of this Court in R.Raja v. S.Rajan and another, 2008 (1) TLNJ 225 (Civil), wherein this Court has held that before saddling the insurance company with the liability, the initial burden lies upon the claimant to show that the vehicle was insured with the particular insurance company. The claimant therefore must produce and prove the insurance with the insurance company. Only on the basis of a mere statement made in the claim petition about the insurance of the vehicle and without disclosing the particulars of the policy, the insurance company cannot be faulted for non-production of the policy. On the basis of the above ratio, the learned counsel for the appellant heavily submitted that at no point of time the vehicle belonging to the second respondent, which is said to have hit the first respondent claimant, was insured with the appellant insurance company. But the finding of the Tribunal merely on the report submitted by the Motor Vehicle Inspector mentioning that the policy said to have been taken by the owner of the vehicle was valid till 2.5.2006 without furnishing the correct policy number etc., is wholly unsustainable. Concluding her arguments, she further submitted that without there being any fault and without holding the insurance company liable for any liability, the impugned award passed by the Tribunal cannot be accepted by this Court.

2. Learned counsel for the first respondent claimant, opposing the above contentions, has submitted that when the accident took place on 17.8.2005 at about 9.40 A.M., near V.C.Motor junction causing grievous injuries to the insured, aged about 25 years, while riding the motor cycle bearing Registration No.TN 23 AZ 5324, the claim petition was rightly filed mentioning the name of the insurer in column No.16. In column No.16A also, the correct and full particulars of the owner of the vehicle were given. Pursuant thereto, an inspection was done by the Motor Vehicle Inspector to find out the veracity of the complaint made by the claimant and finally the Motor Vehicle Inspector also in his report specifically admitted the case of the claimant that on 17.8.2005 the vehicle belonging to the second respondent was involved in the accident and the said report also further stated that the Oriental Insurance Company had issued the policy in respect of the vehicle and that policy was valid till 2.5.2006. Therefore, when the claimant has discharged his burden successfully and pursuant thereto, the Motor Vehicle Inspector has also filed his report stating clearly the date of expiry of the insurance certificate, name and address of the insurance company which has issued the policy in respect of the vehicle stating that the policy was valid till 2.5.2006, the Tribunal has rightly accepted the claim of the injured and ordered for payment of only a sum of Rs.56,000/-. Hence it is not open to the insurance company to say that for not furnishing the insurance policy number by the owner of the vehicle, the award of the Tribunal should be set aside. In support of his submissions, he has also relied upon a decision of this Court in New India Assurance Co.Ltd., Bombay v. Madhammal and others, 2012 (1) TN MAC 697 to contend that unless a perversity is seen in the report of the Motor Vehicle Inspector, the contents thereof cannot be rejected.

3. This Court finds it difficult to accept the case of the first respondent claimant. The reason is that when the accident took place on 17.8.2005 at about 9.40 A.M., near V.C.Motor junction while the claimant was riding the motorcycle bearing Registration No.TN 23 AZ 5324, a car bearing Registration No.37 H 7997 owned by the second respondent, driven in a rash and negligent manner, appeared to have caused the accident, as a result the claimant is said to have sustained injuries including multiple fractures. It was his case that he was taken to H.H.Apollo Hospital, Melvisharam for treatment. Later on it appears that he had also filed a criminal case in Crime No.440 of 2005 on the file of Walajapet Police Station against the driver. Only thereafter, he moved the Tribunal, which has allowed his claim for a sum of Rs.55,186/-. No doubt, he has given the name and full address of the Oriental Insurance Company in column No.16 of the claim petition. Even in column No.16A, he has given the full particulars of the owner of the vehicle, namely, the second respondent. But nowhere he had

furnished the requisite particulars, namely, the insurance policy number taken by the owner in respect of the vehicle from Oriental Insurance Company Limited covering the policy. In this context, it is pertinent to extract the relevant portion of the order of this Court in C.M.A.No.78 of 2000 dated 11.9.2006 (United India Insurance Company Ltd., rep.by its Branch Manager, Karaikkal v. Sudhakar-Minor rep.by his father and natural guardian Mr.Ramayyan and another), wherein this Court has held as follows:-

"8. As rightly pointed out by the learned counsel appearing for the appellant, unless the policy details are furnished to the insurer by the claimant, it is impossible for the insurer to produce the policy before the Tribunal. In this case, the second respondent/the owner of the vehicle remained ex parte. The first respondent herein has also not adduced any evidence to show that the vehicle in question was insured with the appellant. The claimant has also not produced any evidence to show that the branch office of the appellant was located at the relevant point of time at Karaikal. The Tribunal has erred in fastening the burden on the insurer to prove a negative thing, which in the considered view of this Court, is erroneous. Therefore, this Court is of the considered view that the finding of the Tribunal that the vehicle in question was insured with the appellant herein is erroneous and has to be set aside and accordingly set aside."

In similar lines, this Court in the decision in R.Raja v. S.Rajan and another, 2008 (1) TLNJ 225 (Civil) has held that only when the insurance particulars are given by the claimant, the insurance company could be called upon to produce the policy and the particulars thereof. Before saddling the insurance company with the liability, the initial burden always lies upon the claimant to show that the vehicle was insured with the particular insurance company. Therefore, it is for the claimant to produce and prove the insurance with the insurance company. The relevant portions of the order of this Court read thus:-

"10. Only when the insurance particulars are given by the claimant, the Insurance Company could be called upon to produce the policy and the particulars thereon. Before saddling the Insurance Company with the liability, initial burden lies upon the

claimant to show that the vehicle was insured with the particular Insurance Company. The claimant must produce and prove the insurance with the second respondent/Insurance Company. On the basis of mere statement made in the claim petition about the insurance of the vehicle and without disclosing the particulars of the policy, Insurance Company cannot be faulted for non-production of the policy.

11. No doubt, the claimant has produced Ex.P-4 receipt. The second Respondent has examine RW-1 and tried to explain that Ex.P-4 receipt was not issued bfor policy in respect of auto TSE 3485. It is not as if the Insurer remained tightlipped taking the stand that it is for the owner of the vehicle to produce the policy before the Tribunal. The second respondent/Insurance Company made every endeavour in examining RW-1 - Assistant Manager to substantiate their plea that Ex.P-4 does not relate to auto TSE 3485. In the absence of correct particulars, the Insurance Company cannot be faulted."

4. A mere perusal of the aforementioned judgments would clearly show that the claimant must produce and prove the factum of insurance with the insurance company. On the basis of mere statement made in the claim petition without the insurance of the vehicle and without disclosing the particulars of the policy the insurance company cannot be faulted for non-production of the policy. In the present case, the insurance company from day one had denied the coverage of policy with the offending vehicle belonging to the second respondent. Even while stepping into the witness box, one of the officers of the appellant insurance company has taken the consistent stand that the vehicle was not even insured with the appellant. When that has not been properly taken care of by the Tribunal, it is highly improper on the part of the Tribunal to fasten the liability on the appellant insurance company. When a specific plea was taken by the insurer that the offending vehicle was not insured with the insurance company, the claimant should have taken necessary steps to produce the policy number of the vehicle and in the absence of any policy details, it is not possible for the insurer to produce the policy before the Tribunal and prove the negative that there was no insurance. Thus, failure to produce the policy number of the vehicle would show that the vehicle was not insured with the insurance company. Therefore, the insurance company is not liable to pay the compensation to the legal representative of the deceased. Such vital aspect has been

completely lost sight of by the Tribunal. Therefore, this Court, finding the erroneous approach adopted by the Tribunal, is not inclined to support the impugned award. Accordingly, the impugned award is set aside and the civil miscellaneous appeal stands allowed. However, it is open to the first respondent claimant to proceed against the owner of the vehicle, if so advised. Consequently, M.P.No.1 of 2010 is closed. No costs.

Sd/-

Asst.Registrar (CCC)

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Sub Asst. Registrar

To

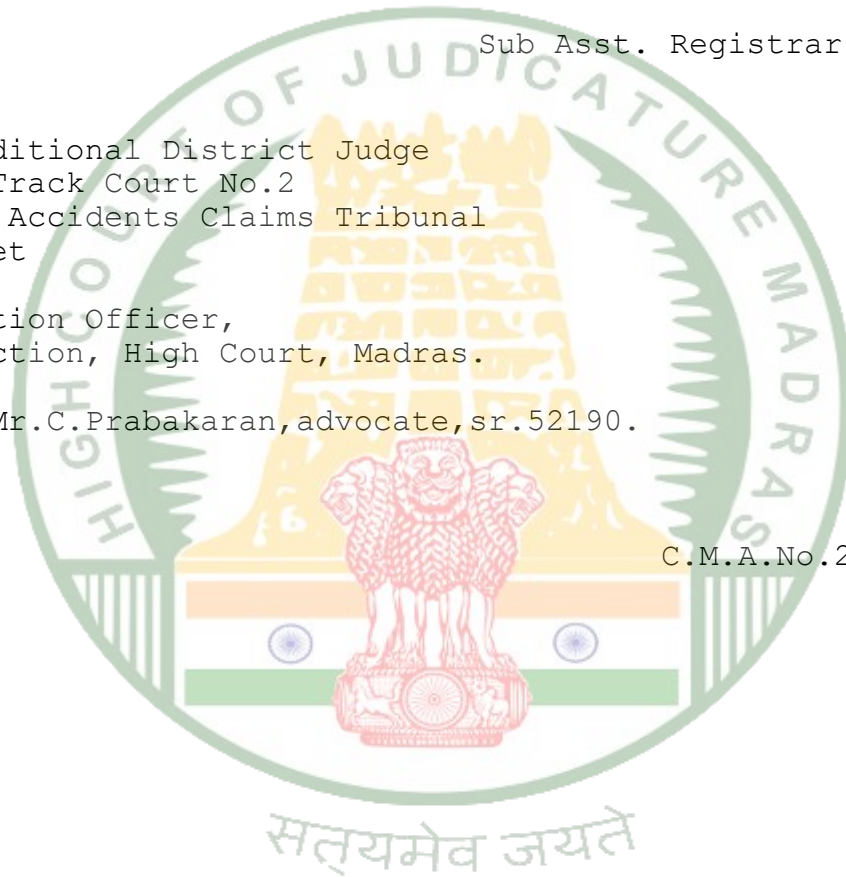
1. The Additional District Judge
Fast Track Court No.2
Motor Accidents Claims Tribunal
Ranipet

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

+1 cc to Mr.C.Prabakaran,advocate,sr.52190.

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