

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 24.01.2017

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A.No.421 of 2014

and

M.P.No.1 of 2014

The Manager,
M/s.TATA AIG General Insurance Company Ltd.,
No.1, Ethiraj Salai,
Egmore, Chennai - 600 008. Appellant/2nd Respondent

Versus

1.Mr.C.Muthukumar

2.Janaki Respondents 1 & 2/Petitioners

3.A.R.Thirumurthy 3rd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 26.07.2013 made in M.C.O.P.No.100 of 2013 on the file of the Motor Accident Claims Tribunal, Second Additional District Court, Tindivanam.

For Appellant : Mr.N.Vijayaraghavan

For Respondents (1 & 2) : Mr.V.Krishnamurthy

For Respondent No.3 : No appearance

J U D G M E N T

In this appeal, the bone of contention raised by the Insurance Company, the appellant herein, is whether it is still liable for payment of compensation, even after the cancellation of the policy, on account of the dishonor of the cheque, issued for payment of premium, which was communicated to the third party after the accident.

2.The law of liability under motor insurance policies when the premium cheque is dishonored differs, depending on who makes the claim and when. Claims can be categorised as own-damage claims and third-party claims, further divided into claims prior to cancellation of the policy and post-cancellation claims.

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3. The deceased Chakrapani, aged 55 years, died in an accident on 12.04.2011. His Son aged 29 years and daughter aged

25 years have filed the claim petition in M.C.O.P.No.268 of 2011, before the Motor Accidents Claims Tribunal, Tindivanam, claiming a sum of Rs.10,00,000/- as compensation.

4. The Claims Tribunal, on considering the oral and documentary evidence adduced on either side, taking monthly income of the deceased at Rs.4,000/- per month and deducting 1/3rd towards personal expenses and by adopting multiplier of 9, awarded the compensation towards loss of dependency at Rs.2,88,036/- and awarded a sum of Rs.5000/- to each of the claimants totally Rs.10,000/- towards love and affection and towards funeral expenses a sum of Rs.5,000/- was awarded and also a sum of Rs.3,000/- towards ambulance expenses and totaling a sum of Rs.3,06,036/- was awarded as compensation, along with interest @ 7.5% per annum from the date of petition till the date of deposit.

5. The tribunal has stated that the owner of the vehicle as well as the Insurance Company are jointly and severally liable to pay compensation to the claimants.

6. It is the grievance of the Insurance Company that because of the cancellation of the policy by the Insurance Company, the Insurance Company should not be made liable to pay the compensation. If at all the Insurance Company is made liable, liberty has to be granted to recover the compensation from the owner, after the Insurance Company paying the compensation to the claimants.

7. It is seen that the accident took place on 12.04.2011 and the cheque issued by the insured towards payment of premium was on 22.07.2010 and the Cheque was dishonored on 24.07.2010. The policy was cancelled by the insurer by letter dated 02.9.2010 (Ex.R4). Legal Notice issued by the insurer to the insured was on 03.07.2013 (Ex.R9) and acknowledgment card was dated 06.07.2013 (Ex.R10) i.e. after the date of accident.

8. The learned counsel for the appellant also submitted that immediately after the cheque was dishonoured, which had been issued towards the liability to pay premium, Insurance Company used to send notice intimating the cancellation of policy, but the Insurance Company did not maintain the acknowledgement card. But, subsequently in the year 2013, 2nd notice was issued and as per the records cancellation of policy is proved to have been taken place after the date of accident i.e. 12.04.2011 and the cheque was also dishonoured and therefore Insurance Company have the right to recover the same from the owner. He has also relied upon the Judgment of the Hon'ble Supreme Court in United India Insurance Co. Ltd. Versus Laxamma and others reported in 2012 ACJ 1307, wherein paragraph 19 is extracted hereunder:

"19. In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards

payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Section 147 (5) and 149 (1) of the M.V.Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy award of compensation in respect thereof.

8.1. Section 149 of the Motor Vehicles Act, 1988, reads as follows:

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks—

(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the

liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3)Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a Court in India: Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4)Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section(1) of section 147, be of no effect: Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5)If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the

insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be. Explanation.—For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under section 165 and "award" means an award made by that Tribunal under section 168."

Section 147 in The Motor Vehicles Act, 1988, reads as follows:
"147 Requirements of policies and limits of liability. —

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative

carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance

issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

9. In this case, there is no prior intimation, regarding the cancellation of policy before the date of accident, and therefore the Insurance Company has to satisfy the award. In other words, the liability of the Insurance Company does not cease so far as the third party is concerned. But, even though the communication regarding the cancellation of policy has not reached the owner of the vehicle, the fact remains that cheque issued by the insured has been dishonored and the fact that the cheque would be dishonored must be within the knowledge of the owner and hence as there is no valid policy of insurance, the policy having been cancelled, the Insurance Company is at liberty to recover the compensation from the owner.

10. The actual non-communicated cancellation of the policy which would not give sufficient notice to the claimant regarding the cancellation is not binding on the third party but it is binding on the owner who deemed to have notice regarding the same.

11. With the above observation made, the Insurance Company is directed to deposit the award amount, ordered by the Tribunal less the amount already deposited if any, along with interest and is at liberty to recover the same from the owner.

12. Accordingly, this Civil Miscellaneous Appeal is allowed, to the extent indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

arr

To

The Motor Accidents Claims Tribunal
(II Additional Judge),
Tindivanam.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.4845

+1cc to Mr.V.Krishnamurthy, Advocate, S.R.No.4409

C.M.A.No.421 of 2014
and

M.P.No.1 of 2014

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