IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.1307 of 2009

and MP.No.1 of 2009

The National Insurance Co. Ltd.,
Third Party Claims Office,
751, Mount Road,
Chennai - 600 002. ... Appellant/2nd Respondent

Vs.

1.N.Arul

2.G.Prabhakaran ... Respondents/Petitioner/1st Respondent

Prayer : Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act 1988 against the decree and judgment dated 01.11.2007 made in M.A.C.T.O.P.No.256 of 2004 on the file of the Motor Accident Claims Tribunal, Ponneri.

For Appellant :Mr.S.Vadivel
For Respondents :Mr.Selvam
for Mr.V.Manisekaran [R1]
R2 - No Appearance

JUDGMENT

The appellant in this case is the insurance company that was arrayed as the second respondent before the Tribunal. The relevant facts necessary for the disposal of the appeal are that on 20.3.2004, the claimant was travelling as a pillion rider in a two wheeler and suffered injuries when the motorcycle was knocked down by a Tata Sumo, a four wheeler. The claimant approached the Tribunal with a claim of Rs.2,00,000/- for the injuries he had suffered whereas the Tribunal has passed an award for Rs.50,000/-.

2. Before the Tribunal one of the defences taken up by the insurance company was that there was no active or live policy in force to cover injury or death of third parties subsisting on the date of accident. The Tribunal however, ignored this fact and the liability was fastened on the appellant.

3. Before the Court, the learned counsel for the appellant advanced the same contention that was advanced before the Tribunal. To support his contention he submitted that on 05.09.2003, approximately about six months prior to the date of accident, the second respondent/owner of the vehicle (first respondent before the Tribunal) preferred an application for obtaining insurance policy for the offending vehicle and on the same day vide Ext.R2 cheque, he paid the premium. This cheque was however dishonoured and this is evident from Ext.R-3 & Ext.R-4 (advice slip dated 09.9.2003 and 10.9.2003 intimating insufficient funds in bank account). On 11.09.2003, the policy itself was cancelled and this could be seen from Ext.R-5. Thereafter, communication of cancellation of policy was sent by registered post to the owner of the vehicle and copy of the notice along with postal receipt was also made available on record. However, no acknowledgment card was received and hence not produced. The learned counsel submitted that it is necessary in such circumstances to apply Sec.27 of the General Clauses Act, 1897 and that whenever registered mails are sent it should be presumed to have been delivered to the addressee unless the contrary is shown. If it is so constructed then it is the case where the accident had happened some six months after the communication of cancellation of policy to the owner of the vehicle and therefore, the insurance company cannot be made liable.

4. The learned counsel for the first respondent brought to the notice of this Court that in a similar situation, the Division Bench of this Court has applied doctrine of pay and recover in New India Assurance Co. Ltd., Vs.Azhagusumathi [2015(1) TN MAC 179 (DB)].

5. The above said pronouncement of Division Bench binds this Court and accordingly doctrine of pay and recover shall be applied and accordingly the Insurance Company is directed to meet the liability at the first instance and then to realize the same from the owner of the vehicle. It is pertinent to point out here that the Tribunal also have applied the same doctrine of pay and recover when it directed the appellant to meet the liability arising out of the award.

6. In conclusion, there is not much material to warrant any interference with the award passed by the Tribunal. Accordingly, this appeal is dismissed with no costs. The Insurance Company is directed to deposit the compensated award amount with interest, less if any already deposited, within four weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw the same

forthwith. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ds

To:
1.The Motor Accident Claims Tribunal,
Ponneri.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.V. Manisekaran, Advocate, S.R.No.12080
+1cc to Mr.S. Vadivel, Advocate, S.R.No.11997

rj(CO)
md(16/03/2017)