IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2017

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

C.M.A.No.2792 of 2013
and
M.P. No.1 of 2013
and
C.M.P. No.9637 of 2017

M/s.Bharti Axa General Insurance Co.Ltd.,
Metro Plaza,
No.162, Anna Salai,
Chennai - 600 002. ... Appellant/2nd respondent

Vs

1.P.Palaniammal
2.B.Jayabharathi ... Respondents 1 to 4/
Petitioners 1 to 4
3.P.Pushpalatha
4.P.Kanimozhi
5.D.Rakesh ...5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.2518 of 2010, dated 21.03.2013, on the file of the Motor Accidents Claims Tribunal, XVII Additional District and Sessions Court, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: Mr.K.Suryanarayanan for R1 to R4.
for R5 - Exparte

JUDGMENT

This Appeal has been filed by the insurance company challenging the liability to pay compensation to the claimant.

2. The claims Tribunal has directed the insurance company to pay the compensation to the claimant with liberty to recover the same from the owner.

3. The contention of the insurance company is that when no premium was received by the insurance company from the owner and when the contract of insurance is void for want of consideration, there is no liability to pay compensation and therefore the order passed by the claims Tribunal is liable to be set aside.

4. The specific contention raised by the insurance company is that under Regulation No.4 of the statutory regulations framed regarding payment of premium under the IRDA (Manner of Receipt of Premium) Regulations, 2002, the question of cancellation of the insurance policy does not arise as it is a void contract and not a voidable contract.

5. It is the case of the insurance company that the insurance policy has been cancelled and that it has been duly communicated to the owner and therefore the insurance company is not liable.

6. It is the claim pertaining to death of the deceased Pandian, who is a retired police constable. The legal heirs of the deceased filed the claim petition. P1 is the wife and P2 to P4 are daughters. His parents pre deceased him. They claimed a sum of Rs.6,00,000/- as compensation. The Tribunal has awarded a sum of Rs.4,04,000/- and the break up details are as under :-

For loss of income	:	Rs.3,24,000/-
For loss of love and affection	:	Rs. 60,000/-
For funeral expenses	:	Rs. 5,000/-
For transportation	:	Rs. 5,000/-
For loss of consortium	:	Rs. 10,000/-
Total		Rs.4,04,000/-

7. According to the wife of the deceased, the claimant was earning a sum of Rs.12,000/- per month by working as a security officer in a private company. The notional income is taken at Rs.4,500/- p.m., and annual income has been fixed at Rs.4,500 x 12 = Rs.54,000 and 1/4th is deducted towards living expenses i.e. Rs.54,000 x ¼ = Rs.13,500/- remaining amount of (Rs.54,000 - 13,500) Rs.40,500/- is taken as loss of income. Adopting multiplier of 8, loss of income is quantified at Rs.3,24,000/- awarding loss of love and affection at Rs.60,000/-; Funeral expenses at Rs.5,000/-; Transportation at Rs.5,000/- and loss of consortium at Rs.10,000/- the total compensation is quantified at Rs.4,04,000/-.

8. The insurance company has been directed to pay the amount of compensation with liberty to recover the same from the owner of the vehicle.

9. While passing such order, the Tribunal has relied upon the evidence of RW1. RW1 during cross examination has stated that no intimation was sent to Regional Transport Officer with reference to cancellation of the policy in respect of vehicle bearing Registration NO.TN22-BA-8818.

10. The Tribunal has relied upon the decision of the Hon'ble Supreme Court reported in 2012 ACJ 1307, in which it has been held that unless policy of insurance is cancelled by the authorities,(i.e. the insurer) and intimation of such cancellation has reached the insured before the accident, the insurance company has to indemnify the third parties and the relevant observation reads as under :

> “19. In our view, the legal position is this : where the policy of insurance is issued by an authorised insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorised 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 sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorised 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 authorised insurer to cover a vehicle on receipt of the cheque paid for 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 ceased and the insurance company is not liable to satisfy awards of compensation in respect thereof.

11. Admittedly, in this case, there is no proof to show that the cancellation of the insurance policy has reached the owner of the vehicle before the accident.

12. Once a policy is issued, the third party is put to notice that there is valid policy of insurance. It is the duty of the insurance company to ensure that before issuing policy there is consideration for the same. Even if there is no consideration, it is duty of the insurance company to collect the premium and to get the policy validated. It is not open to the insurance company to say that the policy is void (after issuing the same) so far as third party is concerned. May be it is open to them to contend so, so far as the owner is concerned. It is open to them to say so, only after receipt of

communication regarding cancellation by the owner, before the accident. In this case, it is not proved that such a communication regarding cancellation has reached the owner before the accident. Therefore, the contention that the insurance company is not liable cannot be accepted.

13. Therefore, the appeal has no merits, and the same is dismissed by confirming the award passed by the Tribunal. Consequently, connected Miscellaneous Petition is also closed. No costs.

14. The appellant / Insurance company is directed to deposit the entire award amount, less the amount already deposited, if any, along with with interest @ 7.5% per annum from the date of petition till the date of deposit to the credit of MCOP No.2518 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

vsi2

To

1. The Motor Accident Claims Tribunal,
XVII Additional District and Sessions Court,
Chennai.

+1cc to Mr.K.Suryanarayanan, Advocate Sr. 46500
+1cc to Mr.M.B.Gopalan, Advocate Sr. 47567

SKS(CO)
VR(24/8/2017)