



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 25.10.2017

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.306 of 2014
and
MP(MD)Nos.1 and 2 of 2014

The Manager,
United India Insurance Company Ltd.,
North Car Street,
Ambasamudram.

: Appellant/2nd respondent

Vs.

1.Viji Holda
2.Selvin
3.Pitchammal
4.Paramasivam

: R1 to R3/Claimants
: R4/first respondent

Prayer : Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the Judgment and decree dated 20.06.2013 passed in MCOP No.434 of 2012 on the file of the Motor Accidents Claims Tribunal (3rd Additional District and Sessions Judge), Tirunelveli and set aside the same.

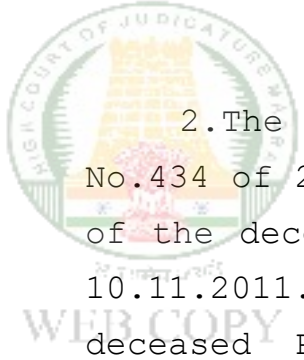
For Appellant : Mr.I.Robert Chandrakumar
For R1 to R3 : Mr.T.Selvakumaran

For 4th Respondent : Mr.P.Senthurpandian

J U D G M E N T

[Judgment of the Court was delivered by **K.KALYANASUNDARAM, J**]

Challenging the award passed by the Motor Accident Claims Tribunal (III Additional District and Sessions Judge), Tirunelveli, <https://hcservices.ecourts.gov.in/hcservices/> in MCOP No.434 of 2012, dated 20.06.2013, the Insurance Company preferred this appeal.



2.The respondents 1 to 3 as claimants filed a petition in MCOP No.434 of 2012 claiming compensation of Rs.45,00,000/- for the death of the deceased Pushparaj, who died in a motor vehicle accident on 10.11.2011. According to the claimants, on 10.11.2011, when the deceased Pushparaj was riding his motorcycle TN-72-HL-2085 on Tirunelveli-Tenkasi main road from east west direction, a TATA ACE load Auto TN-76-X-4540 belonging to the fourth respondent, insured with the appellant, driven by its driver in a rash and negligent manner, dashed against the deceased. Due to the injuries sustained, the deceased died on the spot. A case in crime No.559 of 2011 under Sections 279, 337, 304(A) was registered by the Alangulam Police Station.

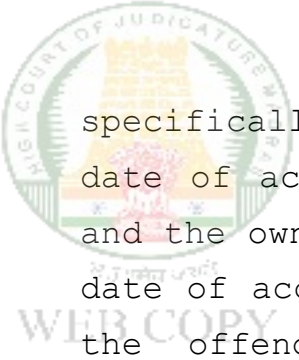
3.The appellant resisted the claim petition, by filing a counter denying the allegations and averments made in the claim petition and prayed for dismissal of the claim petition.

4.The fourth respondent, who is the owner of the vehicle has not produced the insurance policy to show that on the date of accident, the offending vehicle was insured with the appellant Insurance Company, however, the tribunal made the appellant to pay compensation.

5.The appellant Insurance Company has filed MP(MD)No.2 of 2014 under Order 41 Rule 27 of CPC to receive additional evidence, the original insurance policy, dated 11.11.2011 to show that the offending vehicle was insured with the appellant only after the accident and hence, they are not liable to pay compensation.

6.The appellant Insurance Company has challenged the judgment of the tribunal mainly contending that no liability can be fastened on the appellant, as there was no insurance coverage on the date of the accident.

7.Mr.I.Robert Chandrakumar, learned counsel for the appellant submitted that the offending vehicle was insured with the appellant Insurance Company only on 11.11.2011 and the policy came into effect from 14.11.2011. It is further submitted that the appellant has



specifically denied the accident and the existence of policy on the date of accident, so the burden of proof shifted on the claimants and the owner of the vehicle to prove that there was a policy on the date of accident. In this case, the fourth respondent, the owner of the offending vehicle conveniently remained ex-parte and the claimants have not produced any proof to establish that the vehicle had insurance policy on the date of accident. It is further contended that in the interest of justice, the additional evidence shall be permitted to be marked at the appellate stage.

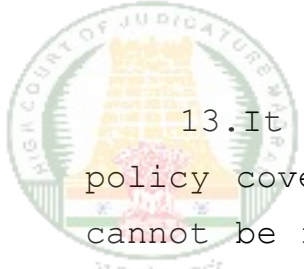
8.Per contra, Mr.P.Senthurpandian, learned counsel for the fourth respondent submitted that in the counter affidavit filed by the Insurance Company, there is no specific denial. Further, the Insurance Company has to prove that the vehicle was not insured on the date of accident.

9.We have heard both sides and perused the materials available on record.

10.We are not able to agree with the submission of the learned counsel for the fourth respondent for the reason that in the counter, it is specifically stated that the claimants have to prove that the offending vehicle was insured with the second respondent Insurance Company on the date of accident.

11.As stated above, in view of the stand taken by the appellant in the counter, the burden of proof shifts on the claimants or the owner of the vehicle, but admittedly, both of them have not discharged their burden, by producing the copy of the insurance policy.

12.It is settled law that to meet the ends of justice, the parties can be permitted to produce additional evidence in the appellate stage. From the perusal of the Insurance policy produced by the appellant seeking permission to mark as an additional evidence, it is evident that the insured had taken the policy on 11.11.2011 and it came into force from 14.11.2011, whereas the accident, in this case, happened on 10.11.2011.



13. It is also well settled that if the vehicle does not have policy coverage on the date of the accident, the Insurance Company cannot be mulcted with liability. In that view, MP(MD)No.2 of 2014 is allowed and the insurance policy is marked as Ex.R1. However, the tribunal in the absence of any evidence produced on the side of the claimants and without any discussion, taken the view that the insurance policy was in force at the time of accident and therefore, the appellant is liable to be compensated. In the light of the above discussion and finding, the liability fastened on the appellant Insurance company alone is liable to be set aside and accordingly, it is set aside.

14. In the result, the appeal is allowed and the respondents 1 to 3 are at liberty to recover the award amount from the fourth respondent, owner of the vehicle. No costs. Consequently, connected MP(MD)No.1 of 2014 is closed.

Sd/-
Assistant Registrar (T & P)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal
(3rd Additional District and Sessions Court),
Tirunelveli.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to M/S.G.PRABHU RAJADURAI, Advocate SR.No.83692.

C.M.A(MD)No.306 of 2014
25.10.2017