IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 27.11.2018

DELIVERED ON 11.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.506 of 2011 and
CMP No.1 of 2011

M/s The New India Assurance Company Limited,
Divisional Office,
Officers Line,
Vellore. ... Appellant/2nd respondent

Vs.

1. Sugumar (died) ... 1st respondent/Claimant

2. Masilamani ... 2nd respondent/1st respondent

3. Ranjani

(3rd respondent brought on record as LR of the deceased 1st respondent Sugumar vide order of this court dated 24.09.2018 in CMP No.1 to 3 of 2014 in CMA 506 of 2011) ... 3rd Respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 16.09.2010 passed in M.C.O.P.No.189 of 2007 by the Additional District Judge, Motor Vehicle Accidents Claims Tribunal, Fast Track Court No.2, Ranipet, Vellore District.



For Appellant : Mr.M.Krishnamoorthy

For 3rd Respondent : Mr.C.Prabakaran

Appeal against 2nd respondent : Dismissed

R1 - Died

# J U D G M E N T

The appellant M/s New India Assurance Company Limited has filed the present appeal questioning their liability to pay compensation to the first respondent/claimant (since deceased) on the ground that the cheque issued by the insurer for payment of premium was dishonoured and the policy of insurance was also cancelled.

2. The first respondent/Claimant (since deceased) filed a claim petition under Section 166 of the Motor Vehicle Act in MCOP No.189 2007 before the Additional District Judge, Fast Track Court No.2, Motor Vehicle Accidents Claims Tribunal, Ranipet seeking compensation of Rs.2,00,000/- for the damage of his building on account of the rash and negligent driving of a trailer bearing registration No. TN-47-J-3954, owned by the 2nd respondent. According to the claimant, the driver of the trailer lorry drove the vehicle rashly and negligently and hit the building belonging to the 2nd respondent and caused damage to the the tune of Rs.2,00,000/-. The said vehicle was insured with the present appellant and the policy Ex.R1 covers the period from 06.04.2004 to 05.04.2005. The 2nd respondent, owner of the vehicle issued a cheque bearing No.032267 dated 06.04.2004 for Rs.4,876/- drawn on Tamilnad Mercantile Bank Limited (Ex.R2) in favour of the appellant for payment of premium. However, the said cheque was dishonoured for the reason " insufficient funds ", as evidenced by the return memo Ex.R4 dated 06.04.2004. The appellant /insurance company issued a notice dated 26.04.2004 to the second respondent directing him to surrender the policy immediately and subsequently cancelled the policy on 08.05.2004 as evidenced by Ex.R7.

3. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant would contend that since the policy was cancelled as evidenced by the cancellation of policy Ex.R7 and the same was also intimated to the owner of the vehicle, there was no contract of insurance between the appellant and the owner of the vehicle and no liability can be fastened upon the appellant/insurance company. His further contention is that the tribunal was wrong in directing the appellant/ insurance company to pay compensation to the first respondent/claimant.

4. Per contra, Mr.C.Prabakaran, learned counsel appearing for the 3rd respondent relied on the following decisions.

i] New India Assurance Company Limited Vs. Azhagusumathi reported in 2015(1) TN MAC 179 (Division Bench)

ii] National Insurance Company Limited Vs. Balkar Ram and others reported in 2014(2) TN MAC 733 (Supreme Court)

and contended that unless the insurance company informed the insured and the RTO about the cancellation of the policy, the insurance company would still be liable to pay compensation to the claimant.

5. In the instant case, the insurance policy Ex.R1 covered the period from 06.04.2004 to 05.04.2005 and the date of accident is 26.05.2004 and therefore, the insurance company was liable to indemnify the owner. The cheque bearing No.032267 dated 06.04.2004 for Rs.4,876/- drawn on Tamilnad Mercantile Bank Limited (Ex.R2) issued by the owner of the vehicle for payment of premium was dishonoured, as evidenced by the cheque return memo Ex.R4. According to the appellant, a notice Ex.R5 was sent to the owner of the vehicle about the dishonour of cheque. However, no proof was filed to show that the owner of the vehicle received the said notice. The appellant/insurance company has not also filed any postal acknowledgment to show that the cancellation of policy Ex.R7 was duly intimated to RTO and the owner of the vehicle. Therefore, in the facts and circumstances of the present case, the appellant cannot be exonerated from its liability to pay compensation, especially when the insurance policy was in force till 05.04.2005.

6. The legal position is well settled, where the policy of insurance is issued by an authorised insurer on receipt of cheque towards payment of premium, and such a cheque is returned dishonoured, the liability of the authorised insurer is to indemnify the third party in respect of the liability in which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Section 147(5) and 149(1) of Motor Vehicle Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has been sent to the insured/owner before the accident. In this regard, it is relevant to refer to the judgment of the Honourable Supreme Court in Daddappa Vs. Branch Manager, National Insurance Company Limited reported in 2008 ACJ 581 (S.C), where the Honourable Supreme Court considered the judgment in Oriental Insurance Company Limited Vs. Inderjit Kaur reported in 1998 ACJ 123 (S.C.) and New India Assurance Company Limited Vs. Rula reported in 2000 ACJ 1630 (SC) and held that if the insurance policy is cancelled on account of dishonour of cheque and the insured as well as the RTO were informed about

the same, the third party would not be entitled to get compensation from the insurance company, as they are liable only so long as the policy subsists.

7. As per Section 27 of General Clauses Act 1897, which deals with "Meaning of service by post " lays down that where any Central Act or regulating authorities requires a document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, preparing and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time, at which the letter would be delivered in ordinary course of post. This Section, thus, raises presumption of due service or proper service of the document sought to be served is sent by properly addressing, preparing and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. Of-course, the presumption is rebuttable.

8. In the instant case, absolutely there is no evidence to show that the cancellation of policy was sent to the insured and the RTO concerned by registered post. Therefore, the claim of the third party cannot be defeated for the self created predicament of the insurer in issuing the policy, without actually receiving the premium. Hence, the insurance company shall pay the compensation to the claimant which it may realise from the owner of the offending vehicle. It is also to be noted that that the policy of the insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant cannot be absolved of the obligation to third parties under the policy, because it did not receive the premium. It's remedies in this behalf lay against the insured.

9. In so far as the quantum of compensation is concerned, the learned counsel for the appellant/ insurance company did not advance any argument and the claimant also did not file any appeal or cross objection against the quantum of compensation awarded by the tribunal. Therefore, the quantum of compensation awarded by the tribunal is upheld.

10. In the result,

(i) The appeal is dismissed with an observation that the appellant/insurance company can work out its remedy against the owner of the vehicle in the manner known to law.

(ii) Connected miscellaneous petition is closed.

(iii) No order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mst

To

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

2. The Record Keeper, VR Section,
High Court, Madras. (2 Copies)

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.85736

+1cc to Mr.C.Prabakaran, Advocate SR.No.85407

CMA.No.506 of 2011
and CMP No.1 of 2011

AK(CO)
GMY(10/01/2019)