IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1892 of 2010 &
M.P. No.1 of 2010

National Insurance Co. Ltd.,
Motor Third Party Claims Offices,
No.751, Anna Salai,
Chennai-600 002.

.. Appellant/2nd Respondent

..Vs..

1.C.Vasudevan ... 1st Respondent/Petitioner

2. M.Udhayashankar ..2nd Respondent/1st Respondent

(2nd respondent ex-parte in Lower Court
Notice may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.2961 of 2002, dated 17.07.2009, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.V, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For Respondent 1 : Mr.T.G.Balachandran

For Respondent 2 : Exparte

J U D G M E N T

The instant appeal has been filed challenging the award dated 17.07.2009 passed by the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.V, Chennai in M.C.O.P.No. 2961 of 2002.

The brief facts leading to the filing of the instant appeal are as follows.

2. The first respondent sustained injuries as a result of

an accident that took place on 18.06.2002 at about 6.30 hours caused by a vehicle bearing registration No.TN22-A-0393 allegedly insured with the Appellant. The first respondent preferred a compensation claim for a sum of Rs.1,68,000/- which was restricted to Rs.1,00,000/- before the Motor Accident Claims Tribunal, Chennai in M.C.O.P.No. 2961 of 2002. The Motor Accident Claims Tribunal by its award dated 17.07.2009 in M.C.O.P.No.2961 of 2002 directed the Appellant to pay the first respondent a sum of Rs.25,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization and also awarded Rs.1,000/- for advocate fees.

3. Aggrieved by the Award dated 17.07.2009 passed in M.C.O.P.No.2961 of 2002, the instant appeal has been filed by the Insurance Company.

4. Heard Mr.N.Vijayaraghavan, learned counsel for the Appellant and Mr. T.G.Balachandran, learned counsel for the first respondent.

5. According to the learned counsel for the Appellant, the primary ground for challenge in the instant appeal is that the Appellant never issued an insurance policy for the vehicle which was involved in the accident and therefore, they are not liable to compensate the claim of first respondent. The learned counsel for the Appellant drew the attention of this Court to the counter statement filed by the Appellant before the Tribunal wherein they have specifically stated that the subject vehicle (Registration No.TN22-A-0393) which was involved in the accident, was never insured with the Appellant.

6. According to the learned counsel for the Appellant, the policy No.501600/2001/6321169 referred to by the claimant, belongs to another vehicle bearing registration No.TN07-M-6775 and not to the vehicle bearing registration No.TN22-A-0393, which was the vehicle involved in the alleged accident. According to the learned counsel for the Appellant, excepting for the statement made by the investigator appointed by the Appellant, in his report that the vehicle bearing registration No. TN 22-A-0393 was insured with the Appellant. It has been a consistent stand of the Appellant/Insurance company that the vehicle involved in the accident is not insured with the Appellant.

7. Per contra, the learned counsel for the first respondent would submit that there is a clear finding given by the Tribunal based on the investigator's report submitted by the investigator appointed by the Appellant that the subject vehicle bearing registration No. TN 22-A-0393 involved in the accident was in fact insured with the Appellant. He drew the attention of this

Court to the findings of the Tribunal on this issue which is re-produced here under:-

> "RW1 was examined on the side of 2nd respondent. RW1 is the Senior Assistant working in the 2nd respondent's insurance company. He deposed that the insurance particulars of the van was obtained from Gunidy Divisional Office. The van TN 22-A-0393 is not covered in the policy Ex.R.1 and it is relating to TN 07-M-6775. Ex.R.2 letter is sent by the Guindy Divisional Office with respect to this. But in cross examination RW1 admitted that the policy number mentioned in the petition is the same policy number in Ex.R.1 also. RW1 admits that the period of policy mentioned in the petition and in Ex.R1 are also the same. RW1 further admits that after 6 years they had filed the counter and in the counter they had not denied about the policy to the van. There was valid policy for the vehicle. Ex.R.3 is the investigator's report. In the investigator's report it is clearly mentioned that TN 22-A-0393 is covered by the policy. The policy is also annexed with the report of the investigation officer of insurance company. It is mentioned that the policy was in force at the time of accident. All the documents are in order. Thus Ex.R.3 proves that there was valid policy for the van. When it is the report of their own investigation officer that the vehicle had valid insurance at the time of accident, the The evidence of RW1 that Ex.R1 policy is alone relating to the vehicle TN 07 M 6775 and vehicle TN 22 A 0393 has no policy is unacceptable. There was valid policy is admitted by their own document Ex.R.3. Hence point is found that the 2nd respondent is liable to pay compensation as the van had valid policy on the date of accident."

8. The learned counsel for the first respondent also drew the attention of this Court to the judgment of the Single Judge of this Court in the case of M/s.United India Insurance Company Limited Vs. R.Dilli and others reported in 2000-2-L.W.493 and he referred to paragraph 8 of the said Judgment which reads as follows:-

> "8. It is found that no plea regarding the insurance coverage in respect of the vehicle with the Appellant was raised before the Tribunal. It is alleged in the affidavit filed in support of the petition for reception of additional evidence

that this had been stated in the additional written statement filed by the Appellant before the Tribunal. There is no such additional written statement available on record and it is fairly conceded by learned counsel for the Appellant that no additional written statement was filed before the Tribunal. It has been held by the Supreme Court time and again that parties in possession of the material documents should make them available to the Courts to enable the Courts to make a proper adjudication of the case. The Supreme Court in AIR 1968 SC.1413 Gopalakrishnaji Ketkar V.Mohamed Haji Latif and others has held as follows:

> "If a party in possession of best evidence which would throw light on the issue in controversy withholds it then the Court ought to draw an adverse inference against him notwithstanding that onus of proof does not be on him." "

By referring to the said judgment, the learned counsel for the first respondent would submit that all material documents available with the Appellant which has been relied upon in this appeal, ought to have been placed before the Tribunal, which they failed do so in the instance case.

9. According to the learned counsel for the first respondent, the insurance policy disclosing that the vehicle was in fact insured with the Appellant was produced only by the investigator appointed by the Appellant before the Tribunal. According to him, the investigator was not examined by the Appellant before the Tribunal and the Investigator's report was also filed only by the Appellant before the Tribunal which was marked as Ex.R3. Therefore, according to him, the Appellant cannot now contend at this stage, that too, after the lapse of more then 16 years, that the Appellant did not issue an insurance policy for the subject vehicle which was involved in the accident. Further, he would contend that no complaint was lodged by the Appellant against any fake policy.

10. This Court after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:

a) The injuries sustained by the first respondent as a result of the accident is not disputed by the Appellant. The quantum of compensation awarded to the first respondent is also not challenged by the Appellant in this appeal.

b) The Investigator appointed by the Appellant in his report namely Ex.R3 has confirmed that the subject vehicle which was involved an accident was in fact insured with the Appellant.

c) No complaint has been given by the Appellant before any authority for any fake insurance policy. If the contention of the Appellant has to be believed, they would certainly have given a complaint to the authorities concerned that a fake policy was being used to make a false compensation claim against the Appellant. In the instant case, admittedly no such complaint was given by them.

d) The Tribunal has relied upon Ex.R3, the Investigator's Report produced by the Appellant before the Tribunal and only thereafter, has passed the award in favour of the first respondent. The contention of the Appellant that the investigator's report which discloses that the subject vehicle involved in the accident was insured with the Appellant is based on the documents collected by the Investigator from the police station and not from the Appellant. No such evidence either oral and documentary is available with the Tribunal for the said contention made by the learned counsel for the Appellant.

e) The Appellant has not been vigilant enough to place all relevant materials before the Tribunal and also let in oral and documentary evidence in support of their defence. At this stage, after the lapse of more than 16 years, the ground for challenge raised in the instant appeal cannot be accepted by this Court.

f) The motor accident compensation provisions under the Motor Vehicles Act is benevolent and beneficial provisions to protect the interest of the dependents of the deceased and the injured in a motor accident.

11. In view of the above observations, this Court is of the considered view that there is no merit in the instant appeal and the civil miscellaneous appeal is dismissed.

12. Accordingly, the Appellant is directed to deposit the Award amount awarded by the Tribunal along with interest from the date of claim till the date of realisation to the credit of MCOP. No.2961 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.V, Chennai, after deducting the amount that has already been deposited by them within a period of four weeks from the date of receipt of a copy of this Order. On such deposit being made, the first respondent is permitted to withdraw the amount lying to the credit of MCOP. No.2961 of 2002 on the file of the

Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.V, Chennai with accrued interest by filing an appropriate application. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mm/nl

To

1. The Motor Accidents Claims Tribunal,
   Additional District and Sessions Court,
   Fast Track Court No.V, Chennai

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

+1cc to Mr.T.G.Balachandran, Advocate, S.R.No. 59590
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 59590

C.M.A.No.1892 of 2010 &
M.P. No.1 of 2010

SJ(CO)
GN(01/10/2018)