IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.1826 of 2008

M. Palanivel .. Appellant

Vs

1.Ammasi

2.The New India Assurance Company Ltd,
G-1 G.N. Chetty Street,
T.Nagar, Chennai-17. .. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to set aside the Award dated 05.04.2007 in M.C.O.P.No.76 of 2005 on the file of Motor Accidents Claims Tribunal, Sangagiri (Sub-Court, Sangagiri).

For Appellant : Mr. R. Subramanian

For Respondents : M/s. K.Padmanabhan for R2
No Appearance for R1

J U D G M E N T

The instant appeal has been filed challenging the Award dated 05.04.2007 passed by the Motor Accident Claims Tribunal, Sangagiri in M.C.O.P.No.76 of 2005.

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

(a) On 5.10.2004, when the 1st respondent/claimant was travelling in a Mini Auto bearing registration No.TN 30 X 4656 towards Chinnappampatti in the Konganapuram – Omalur Road, the driver of the auto, on seeing a lorry coming from opposite side, drove the vehicle in a rash and negligent manner, due to which, the auto got turned down on the road and the 1st respondent/claimant was thrown out of the auto, as a result of which, his left foot got severely injured.

(b) The appellant is the owner of the vehicle and the 2nd respondent is the Insurer of the vehicle. The 1st respondent/claimant filed a claim petition before the Motor Accident Claims Tribunal, Sangagiri (Sub-Court, Sangagiri) claiming compensation of Rs.4,00,000/- stating that since the accident happened due to the rash and negligent driving of the driver of the appellant/owner of the vehicle, the appellant herein and the 2nd respondent Insurance company are jointly and severally liable to pay the compensation.

(c) The tribunal on considering the entire materials and documentary evidence available on record, held that since the claimant has not produced the insurance policy evidencing that the vehicle has been insured with the 2nd respondent insurance company, directed the appellant herein to pay the compensation of Rs.75,000/- along with 7.5% per annum from the date of petition till the date of realisation. Since the 2nd respondent Insurance Company was absolved of liability by the Tribunal holding that there is no Insurance Policy, the instant appeal has been filed by the appellant/owner of the vehicle disputing liability.

3. Heard Mr. R.Subramanian, learned counsel for the Appellant and Mr.K. Padmanabhan, learned counsel for 2nd respondent.

4. Before the Tribunal, the appellant had filed a Cover Note dated 27.1.2004 and as per the said cover note, the effective date of commencement of insurance was on 27.11.2003 and the date of expiry of the insurance was on 20.11.2004. The accident took place on 05.10.2004.

5. According to the learned counsel for the Appellant, the cover note is also a valid certificate of insurance. He relied upon a judgment of the Honourable Supreme Court reported in 2008 ACJ 333 in the case of National Insurance Company Limited vs. Abhaysing Pratapsing Waghela and others, wherein, the Honourable Supreme Court has held that Cover Note would come within the purview of definition of 'certificate of insurance'' in terms of Clause (b) of section 145 of the Motor Vehicles Act.

6. Learned Counsel for the appellant also drew the attention of this Court to the letter dated 23.07.2007 issued by Indus Ind Bank to the Appellant confirming that subsequent to the issue of the Cover Note dated 27.11.2003, the 2nd respondent Insurance Company has renewed the policy vide policy number 718501/31/H4/14362 dated 27.11.2004.

7. Therefore, according to the learned counsel for the Appellant, having paid the premium and having obtained the Cover Note and subsequently having got the policy renewed, the learned Tribunal ought not to have absolve the liability of the 2nd

respondent Insurance Company.

8. Per contra, the learned counsel for the 2nd respondent Insurance Company submits that only for the period from 27.11.2004 to 26.11.2005, an Insurance Policy was issued in favour of the appellant. According to him, there was no policy issued by the Insurance Company for the period from 27.11.2003 up to 20.11.2004.

9. The learned counsel for the 2nd respondent/Insurance company drew the attention of this court, to the findings of the Tribunal that since there was no Insurance Policy on the date of accident, the Insurance Company is not liable to pay compensation.

10. According to the learned counsel for the second respondent, the findings of the Tribunal that the validity of the Cover Note is only for a period of 15 days and therefore, there was no Insurance Policy issued in favour of the Appellant/claimant is factually an incorrect finding.

11. Having perused and examined the Cover Note as well as the letter dated 23.07.2007 issued by Indus Ind Bank to the Appellant/claimant, it is clear that the policy was renewed subsequent to the issuance of Cover Note dated 27.11.2003 and the Insurance coverage was available on 05.10.2004 which is the date of the accident.

12. The letter dated 23.07.2007 issued by the Indus Ind bank in favour of the Appellant is also not disputed by the learned counsel for the 2nd respondent Insurance Company.

13. The Judgment of the Honourable Supreme Court relied upon by the learned counsel for the Appellant also supports the stand taken by the Appellant that the Cover Note also comes within the definition of Certificate of Insurance in terms of clause (b) of section 145 of the Motor Vehicles Act.

14. The learned counsel for the 2nd respondent Insurance Company had also produced the Insurance Policy for the period from 27.11.2004 to the mid-night of 26.11.2005. If there is no Policy for the Period from 27.11.2003 up to 26.11.2004, there was no necessity for the Insurance Company to renew the Policy for the same vehicle when there is already a claim pending.

15. Regarding the merits of the claim, the same can be agitated by the 2nd respondent Insurance Company before the Tribunal, once the matter is remanded back to the Tribunal.

16. Therefore, this Court is of the considered view that

since there was a Cover Note which is a valid Certificate of Insurance and further the Insurance Policy have been issued to the Appellant subsequently, the Tribunal ought to have adjudicated the claim on merits instead of rejecting the claim against the 2nd respondent Insurance Company on the ground that there was no Insurance Policy on the date of the accident.

17. In the result, the Award dated 05.04.2007 passed by the Motor Accident Claims Tribunal in M.C.O.P.No.76 of 2005 is hereby set aside and the matter is remanded back to the Tribunal for fresh adjudication and the trial court is directed to dispose of the claim in accordance with law after giving sufficient opportunity to the 2nd respondent Insurance Company, to defend the claim in accordance with law.

18. The appeal is disposed of in the above terms. Consequently M.P.No.2 of 2008 is closed. No Costs.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

msr/arb

To

1.The Motor Accident Claims Tribunal,
Sangagiri
(Sub-Court, Sangagiri).

2.The Record Keeper,
Vernacular Section,
High Court of Madras.

+1cc to Mr.R.Subramanian, Advocate SR.No.55890





GMY (28/09/2018)