



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.01.2018**

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. (MD) No.1410 of 2016

& C.M.P. (MD) Nos.11800 & 11801 of 2016

& C.M.A. (MD) No.1411 of 2016

& C.M.P. (MD) Nos.11802 & 11803 of 2016

C.M.A. (MD) No.1410 of 2016

M/s.United India Insurance Compnay Ltd.,
Through its Branch Manager,
Office at No.6/341-C,
Post Office Street,
Avinashi,
Coimbatore.

.. Appellant/ 2nd Respondent

-Vs-.

1.Vittal Thevar

...1st Respondent/Petitioner

2.M/s.AirFlow Equipments (India) Pvt Ltd.,
Through its Director,
Office at No.9, Chelliamman Koil Street,
Keelakattalai,
Chennai.

...2nd Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2014 passed in M.C.O.P.No.220 of 2014, on the file of the Motor Accident Claims Tribunal (Special Sub-Court) Tirunelveli.

C.M.A. (MD) No.1411 of 2016

M/s.United India Insurance Compnay Ltd.,
Through its Branch Manager,
Office at No.6/341-C,
Post Office Street,
Avinashi,
Coimbatore.

.. Appellant/ 2nd Respondent

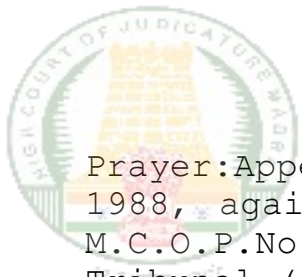
-Vs-.

1.Muthumari

...1st Respondent /Petitioner

2.M/s.AirFlow Equipments (India) Pvt Ltd.,
Through its Director,
Office at No.9, Chelliamman Koil Street,
Keelakattalai,
Chennai.

...1st Respondent/ 1st Respondent



Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2014 passed in M.C.O.P.No.224 of 2014, on the file of the Motor Accident Claims Tribunal (Special Sub-Court) Tirunelveli.

WEB COPY

For Appellant
in both appeals

:Mr.G.Prabhu Rajadurai

For Respondents
in both appeals

:No appearance

* * * * *

COMMON JUDGMENT

Sheer negligence on the part of the officials of the appellant Insurance Company invited an adverse award which could have been avoided by verification of records and by filing the proper counter statement in tune with the facts.

2. The appellant Insurance Company is a Public Sector Company which is holding the public money in trust for the benefit of public. It is not only the Public Sector Insurance Company and it is also discharging the public duty to ensure and indemnify any loss or compensation in case of any accident involving the insured vehicle.

3. It is stated by the Public Sector insurance that these Companies are loosing heavily in respect of third party claims. When such is the position, the officials who are entrusted with the duties of third party claims should be duty bound to be vigilant to see that the proper facts are pleaded in the counter statement after having a discussion with the concerned panel Advocates.

4. It is a common knowledge that the counter statements are mechanically prepared denying each and every statement made in the counter claims. Moreover, the panel Advocates are not appointed properly and even the retired insurance officials suddenly and surprisingly, on the very next day of the retirement, enrolled immediately after retirement and on the very next day, they become a Senior Panel Counsel who may not much experience in Court proceedings and thereby jeopardise the interest of the Public Sector Insurance Companies.

5. This kind of trend has to be arrested failing which, the incurring of loss by the Insurance Companies cannot be curtailed or prevented.



6. This case would demonstrate as to how the fact of absence of policy as on the date of the accident on 05.01.2014, was not pleaded in the counter statement resulting in passing of the award, merely on the ground that the appellant Insurance Company did not deny the existence of the insurance policy. If, on verification, the appellant-Insurance Company pleaded that there was no policy as on the date of the accident, the adverse award as well as filing all these appeals would have been avoided by the Insurance Company. Therefore, this Court left with no other option except to summon the Chairman -cum-Managing Director to brief the facts.

7. These appeals arise out of the accident occurred on 05.01.2014, when the respective first respondent in the appeals travelled in a motor-cycle which was hit behind by a Skoda Car belonging to the second respondent driven in a rash and negligent manner allegedly insured with the appellant Insurance Company. Therefore, the claims petitions have been filed.

8. The Tribunal found that the said Skoda Car was driven in a rash and negligent manner and awarded the compensation to the respective first respondent to be paid by the appellant Insurance Company. The said award is being challenged before this Court.

9. At the time of moving these appeals, C.M.P.(MD).Nos.11800 of 2016 has been filed by the Insurance Company stating that the Insurance policy was taken with the appellant on 07.01.2014 commencing from early morning on 08.01.2014 to prove that there was no existence policy on 05.01.2014. The said document was not filed before the Tribunal and hence, to set aside the award, the insurance policy, which should have been filed before the Tribunal has been filed before this Court.

10. Notice has been ordered in respect of the respondents 1 and 2 and they have been served and even though their names are printed in the cause-list they chose not to appear. Therefore, this Court decides to dispose of both appeals on merits with the available records.

11. Heard Mr.G.Prabhu Rajadurai, learned Counsel appearing for the appellant-Insurance Company and perused the material available on records.

12. There is no dispute with regard to the accident occurred on 05.01.2014 and sustaining of injuries by the respective first respondent as itself proved by the evidence of PW.1 as well as PW2. The Tribunal also, based on evidence of PW.1 and 2 the injured persons and filing of F.I.R -Ex.P1, in the absence of any

<https://hccourtorgs.gov.in/decree>

severely injured persons rightly came to the conclusion that the accident occurred because of the rash and negligent driving of the driver of the Car.



13. As the appellant-Insurance Company did not deny the existence of the policy of the Car, the Tribunal slapped compensation of Rs.5,59,360/- and Rs.1,08,540/- respectively to the respective first respondent. It is very clear, based on available records, that the Tribunal was justified in passing the common award by fastening the liability of paying the award amount on the appellant Insurance Company.

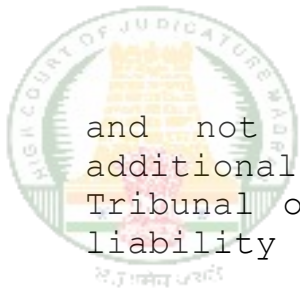
14. Only in C.M.A.(MD)No.1411 of 2016, C.M.P(MD)No.11802 of 2016 has been filed by the appellant to receive the insurance policy bearing No.1713013113P106491994. Since no one appears on behalf of the respondents, it is regarding the same vehicle, namely, Skoda Car bearing Registration No.TN-22-AS-4149, standing in the name of the second respondent, there cannot be any objection for marking the said document. In case, the second respondent appeared before this Court, and remanding the matter for the purpose of marking the document and thereafter passing the awards, then it would prolong the matter by way of appeal and it would not serve in the interest of justice. It is the very object of the Motor Vehicles Act, to see that the victims are compensated speedily. For no fault on the claimant, the award passed in his favour and that too for the default of the appellant, should not be set aside.

15. Assuming for a moment, even the second respondent/owner appears before this Court or on remand, before the trial Court, he could not take any defence against the policy as it is evident from the additional documents itself. After the accident occurred on 05.01.2014, only the Insurance policy was taken on 07.01.2014 and that too in the name of the second respondent. Therefore, the additional document has to be received and accordingly, it is marked Ex.R1.

16. The additional document Ex.R1/Insurance Policy would disclose that it was taken on 07.01.2014 and it would commence from the early hours on 08.01.2014, and hence, there is no policy as on the date of the accident. Therefore, the Insurance Company could not be mulcted with the liability.

17. Even though the owner/second respondent pleaded before the trial Court that he already sold the vehicle to one Mahendran on 29.01.2010, and as on the date of the accident, the R.C book is standing in the name of the second respondent only, the R.C. book alone would reflect the name of the owner of the vehicle, even it has been sold orally. So, the liability if arises out of the accident involving the said vehicle, should fall on the owner of the vehicle.

<https://hcservices.e-courts.gov.in/hcservices>, the new Insurance policy which was taken on 07.01.2014 has been taken in the name of the second respondent. Therefore, the second respondent alone has to pay the compensation



and not the appellant Insurance Company as proved by the additional document. Therefore, the liability fixed by the Tribunal on the appellant Insurance Company is set aside and the liability is fastened only on the owner/ second respondent alone.

19. Only based on the pleading of the appellant, the Tribunal had fastened the liability on the appellant/Insurance Company. Because of the failure on the part of the appellant to plead their case properly, the innocent victims viz., respective first respondent should not suffer and therefore, to make it as a lesson for the officials of the appellant Insurance Company and also safeguard the interest of the claimants, this Court directs the appellant Insurance Company to pay the compensation to the respective first respondent and recover the same from the second respondent/owner.

20. It is brought to the notice of this Court that the compensation amount was already deposited by the Insurance Company before the Tribunal. Therefore, the Tribunal shall transfer the entire compensation amount to the respective personal Savings Bank Account Numbers of the respective first respondent through RTGS/NEFT system within a period of **two weeks** from the date of receipt of a copy of this judgment.

21. In the result, these Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal
(Special Sub-Court),
Tirunelveli.
2. The Record Keeper, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+2cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No.43498,43497

GSR

VB/SKN/RSK/SAR1/05.04.2018/5P/6C