IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HONOURABLE TMT. JUSTICE R.HEMALATHA

C.M.A.No.3021 of 2005

The Branch Manager
M/s.United India Insurance
Company Limited
No.366/72, 19th Main Road,
Balaji Nagar,
Bangalore - 21. ... Appellant/2nd Respondent

Vs.

1.Mrs.Vijaya
2.Mr.D.Raju
3.Mrs.Dhanabaggiam ...First Respondent/Petitioners 1 to 3
4.Mrs.R.Parimala ...Respondents/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment in MACTOP No.160 of 1996 dated 13.10.2004 on the file of the Motor Accident Claims Tribunal (Sub Court), Tirupattur, Vellore.

For Appellant : Mr.J.Raja Kalifulla

For R1 to R3 : Mr.A.Jenasenan

For R4 : No appearance

J U D G M E N T

The appellant, United India Insurance Company Limited, Bangalore, the second respondent in MCOP No.No.160 of 1996 on the file of the Motor Accident Claims Tribunal (Sub Court), Tirupattur, Vellore has filed the present appeal questioning the liability to pay compensation to the claimants, respondents 1 to 3.

2. The brief case of the claimants in MCOP No.160 of 1996 is as follows -

2(a) On 23.04.1995, the deceased Ravi was driving a car bearing Registration No.MEA 638 belonging to one Parimala, the 4th respondent near Kalnarsambatti Cross Road. At about 7.30

p.m., a buffalo, all of a sudden crossed the road and in order to avoid hitting the buffalo, the deceased Ravi swerved his car, as a result of which the car toppled. The deceased Ravi sustained fatal injuries and died on the spot. According to the claimants, the deceased Ravi was a driver by profession and was working under the 4th respondent, earning a sum of Rs.2,000/- per month.

2(b) The owner of the car remained absent before the Tribunal and therefore she was set exparte. The appellant/Insurance Company contested the claim petition. The learned Sub Judge/Motor Accident Claims Tribunal, Tirupattur, Vellore after analysing the evidence on record, awarded a sum of Rs.5,46,700/- as compensation to the respondents 1 to 3 / claimants together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The Tribunal, further directed the appellant/Insurance Company to pay the entire compensation to the claimants. Aggrieved over the orders passed by the Tribunal, the present appeal is filed by the appellant/Insurance Company.

3. Mr.J.Raja Kalifulla, learned counsel appearing for the appellant/ Insurance Company contended that a copy of the Insurance Policy which is marked as Ex.R1 before the Tribunal shows that the owner of the car was one A.V.A.P.Krishnan and that the said owner has not been impleaded in the claim petition. It is also contneded that since the contract of insurance is between the said A.V.A.P.Krishnan and the Insurance Company, the appellant cannot be held liable to pay compensation to the claimants in the absence of the owner of hte vehicle being shown as party in the claim petition. He also relied on the decision in The Oriental Insurance Co. Ltd. vs. Dinabandhu Pradhan and another reported in AIR 1994 Ori 177 and contended that when the original onwer of the vehicle is not shown as a party, it is for the claimant to establish that there was a transfer of motor vehicle together with certificate of insurance and the policy and that in the instant case, since the respondents 1 to 3 / claimants failed to establish these aspects, they cannot claim any relief against the insurer of the vehicle, the appellant.

4. Per contra, Mr.A.Jenasenan, learned counsel appearing for the claimants / respondents 1 to 3 herein contended that the vehicle was transferred by A.V.A.P.Krishnan to one R.Parimala, on 14.12.1994 and all the documents pertaining to the vehicle were also handed over to the said Parimala, 4th respondent which is evidenced by a letter dated 05.12.2003 marked as Ex.P7 before the Tribunal. Therefore, the appellant/Insurance Company cannot now contend that they are not liable to pay compensation to the claimants / respondents 1 to 3. He also relied on the

Full Bench decision of the Andhra Pradesh High Court in Madineni Kondaiah and Ors v. Yaseen Fatima and Ors. reported in 1 (1986) ACC 501 and drew the attention of this Court to Para 68 of the said decision which reads thus -

> 68. ...."In a case where the plea is that the insured himself was not liable for the reason that he had transferred the vehicle by the date of the accident, the restrictions contained in Sub-section (2) of Section 96 as regards the defence open to an insurer cannot apply." We respectfully dissent with this view as such plea is clearly one touching the merits of the claim and is clearly prohibited under Sub-section (2). Once the policy was issued validly and is in operation any subsequent rights in the policy and the claims arising thereto would clearly partake the character of merits of the claim and they are barred under Sub-section (2) of Section 96. However we must hold that if for any reason the liability of the insured is excluded the insurer also is not liable as Section 96(2) posits that the insurer should satisfy the judgment obtained against the insured in respect of the policy taken by him. If the court holds that the liability of the insured ceases and is not liable for the compensation it follows that the liability under Sub-section (2) in respect of that policy would not arise against the insurer though the insurer is precluded to raise the defence that the policy has lapsed by virtue of transfer. Let us apply these principles laid down by us to the facts of these cases.

4(a) It is the further contention of the learned counsel for the respondents 1 to 3 / claimants that once the insurable interest subsists,

the insurer is liable and consequently, the Insurance Company is liable to pay compensation. He also relied on the judgment of the Hon'ble Supreme Court in G.Govindan v. New India Assurance Co. Ltd. and ors. reported in 1999 (2) SCR 476 and contended that the Full Bench decision of the Hon'ble Andhra Pradesh High Court in Madineni Kondaiah and Ors v. Yaseen Fatima and Ors. (cited supra) was followd by the Hon'ble Supreme Court.

5. Heard the learned counsel appearing for the appellant as well as respondents 1 to 3 and perused the materials availble on record. There is no represenation for the 4th respondent.

6. In the present case, the accident took place while the deceased was driving the car bearing Registration No. MEA 638 allegedly belonging to one Parimala, 4th respondent herein. Ex.P7, letter sent by the erstwhile owner of the car shows that the car was transferred in the name of the 4th respondent herein on 14.12.1994. Section 157 of the Motor Vehicles Act reads as follows -

157. Transfer of certificate of insurance -

1. where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is been transferred with effect from the date of its transfer.

2. The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

7. In the decision in The Oriental Insurance Co. Ltd. vs. Dinabandhu Pradhan and another (cited supra), the Insurance Policy was produced by the owner of the vehicle when he was examined as a witness and the records showed that he was not at all the actual owner of the vehicle. There were some defects in the insurance policy and in such circumstances, the Hon'ble Supreme Court held that if the original owner of the vehicle had not been impleaded, the insurance company cannot be held liable to pay compensation to the claimants. The facts of the present case are entirely different. Sub Section 2 of Section 157 of the Motor Vehicle Act, 1988 makes the insurer aware of the transfer so that they can make changes in their records and necessary changes can be made in the certificate of insurance and policy. A time of fourteen days has been granted for

applying to the insurer and for some reasons, beyond the control of the parties, intimation may be given after the prescribed period. In the decision in G.Govindan v. New India Assurance Co. Ltd. and ors. (cited supra), the Hon'ble Supreme Court has held that under the old Act and under the new Act, the legislature was anxious to protect the interest of the victim. The relevant portion is extracted hereunder -

> Undoubtedly the full bench decision of the Delhi High Court in Anand Samp Sharma v. P.P. Khurana & Ors., (1989) ACJ 577 and also the full bench decision of Karnataka High Court in National Insurance Co. Ltd. v. Mallikarjun & Ors., AIR (1990) Karnataka 166 differed from the view taken by the Andhra Pradesh High Court in Konadaiah's case and held that the third party liability of the insurer comes to an end on transfer of vehicle by the insured to someone else unless the procedure prescribed for transfer of policy was fulfilled. As noticed earlier, learned counsel on both sides brought to our notice a number of judgments of different High Court taking divergent views. We do not feel it necessary to refer to all those decisions in view of the full bench judgments of three High Courts noticed earlier.
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> As between the two conflicting views of the full bench judgments noticed above, we prefer to approve the ratio laid down by the Andhra Pradesh High Court in Kondaiah's case as it advances the object of the Legislature to protect the third party interest. We hasten to add that the third party here will not include a transferee whose transferor has not followed procedure for transfer of policy. In other words in accord with the well-settled rule of interpretation of statutes we are inclined to hold that the view taken by the Andhra Pradesh High Court in Kondaiah's case is preferable to the contrary views taken by the Karnataka and Delhi High Courts (supra) even assuming that two views are possible on the interpretation of relevant sections as it promotes the object of the Legislature in protecting the third party (victim) interest. The ratio laid down in the judgment of Karnataka & Delhi High Courts (supra) differing from Andhra Pradesh High Court is not the correct one.

8. The above decision was laid down, following the Full Bench decision of the Andhra Pradesh High Court in Madineni Kondaiah and Ors v. Yaseen Fatima and Ors. (cited supra). In

the present case, since on the date of accident, the car was transfered in the name of R.Parimala, the 4th respondent herein, I hold that the appellant/Insurance Company is liable to pay compensation to the claimants/repondents 1 to 3.

9. In the result, this Civil Miscellaneous Appeal is dismissed. The compensation awarded by the Tribunal at Rs.5,46,700/- along with interest and costs is upheld and the appellant/Insurance Company is directed to deposit the award amount, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any to the credit of MCOP No.160 of 1996 on the file of the Motor Accident Claims Tribunal (Sub Court), Tirupattur, Vellore. On such deposit being made, the claimants / respondents 1 to 3 herein are at liberty to withdraw their respective share of the award amount alongwith proportionate interests and costs, on the basis of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn and after following due process of law. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal
Tirupattur, Vellore.

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

+1cc to Mr.J.Raja Kalifulla, Advocate Sr.83554
+1cc to Mr.A.Jenasenan, Advocate Sr.83797

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