

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 26.04.2019

Judgment Delivered on : 13.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3087 of 2012

V.Sasi Kumar

... Appellant

Vs.

1.P.Premkumar

2.N.Natarajan

3.M/s. Canara Bank
Koundampalayam Branch,
Koundampalayam Post,
Coimbatore - 641 030.

4.M/s. United India Insurance Company Ltd.
D.O -V 266, Kapila Tower,
IInd Floor, Opp to Saibaba Temple,
Mettupalayam Road, Coimbatore - 43

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 18.07.2012 made in M.C.O.P.No.1357 of 2008 on the file of the Motor Accidents Claims Tribunal, 1st Additional Sub-ordinate Judge, Coimbatore.

For Appellant : Mr.C. Veeraraghavan

For Respondents : Not ready in notice - R1

: Mr. V. Ramesh Vel (for R2)

: Mr. S. Parthasarathy (for R3)

: Mr. S. Arun Kumar (for R4)

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J U D G M E N T

The Civil Miscellaneous Appeal arises out of the Judgment and Decree dated 18.07.2012 made in M.C.O.P.No.1357 of 2008 on the file of the Motor Accidents Claims Tribunal, 1st Additional Sub-ordinate Judge, Coimbatore.

2.The learned counsel for the appellant/claimant submitted that the appeal has been filed challenging the exoneration of the Insurance Company by the Tribunal on the point that on the date of the accident, there was no valid policy coverage.

3.According to the the claimant/appellant, the vehicle involved in the accident is owned by the second respondent, which was hypothecated in favour of the Canara Bank, Koundampalayam Branch. There was a contract between the owner of the vehicle/second respondent and the third respondent/Bank to pay the premium for renewal of policy every year. Hence, the Tribunal ought to have directed the Bank as well as Insurance Company to pay compensation to the appellant/claimant.

4.The first respondent driver, Prem Kumar was set ex-parte both before this Court as well as the Tribunal.

5.The learned Counsel for the second respondent/owner of the vehicle would contend that as per the terms of the agreement between the second respondent-owner of the vehicle and third respondent/Canara Bank, third respondent/Canara Bank has to pay the premium for the renewal of policy from and out of E.M.I paid by the Second respondent/owner of the vehicle. Incidentally, for the last three previous years, the Bank has remitted the premium and also obtained insurance policy coverage under Ex.R3 and Ex.R.4. The last premium was paid under Ex.R3 for the period of 17.05.2007 to 16.05.2008 by the second respondent/owner of the vehicle, since there was a default on the part of Bank. Thereafter, the Bank also remitted the premium for renewal of the policy for the period of 01.06.2007 to 31.05.2008 and obtained the same under Ex.R4. After it was brought to the knowledge of the Bank, the Bank has addressed a letter dated 18.07.2007 enclosing Ex.R3 and Ex.R4 to the Insurance Company which has been marked under Ex.R5 wherein it was stated that since both the Bank and the owner of the vehicle have remitted the premium for renewal of the said policy, seeking return of the premium paid by the Bank or adjustment of the premium paid by the Bank for the subsequent year.

6.The date of the accident is 10.08.2008. As per the contention of the learned Counsel for the second respondent/owner of the vehicle, in view of the existing condition clause 11, it is incumbent upon the third respondent/Bank to renew the policy and having failed to do so, the Bank should be held liable to pay the award amount and owner of the vehilcle has to be exonerated.

7.The learned counsel for the third Respondent/Canara Bank has contended that as per clause 11 of the Ex.R9, Canmobile agreement between the owner of the vehicle and the Bank, duty is cast upon the owner of the vehicle and not upon the Bank and, therefore, the finding of the Tribunal is substantial.

8.The learned counsel for the fourth respondent/Insurance Company would contend that, on the date of accident, namely, 10.08.2008, there is no valid policy as required under Section 146 of Motor Vehicle Act, and therefore, the Insurance Company cannot be constrained up to pay the compensation, moreso, there is no clarity between the Bank and the owner of the vehicle as to who has to pay the premium.

9.The Insurance company in the counter statement as well as during the trial before the Tribunal has categorically denied Ex.R5 said to have been issued by the Bank, on the ground that no such letter was served upon them. The learned counsel has submitted that no acknowledgment for the alleged service upon the Insurance Company has been produced before the Court.

10.The Point for determination is whether the order of the Tribunal in exonerating the Bank and Insurance Company from the liability is sustainable in law.

11.After perusing the documents filed before the Tribunal and also evidence adduced before this Court, it is seen that the factum of the accident; the manner of the accident and rash and negligence driving on the part of the first respondent/driver of the second respondent's vehicle are not in dispute. Hence, in this regard, the finding of the Tribunal is hereby confirmed.

12.Now, the fourth respondent/Insurance company had specifically raised a plea that on the date of the accident, there is no valid policy coverage on behalf of the owner/second respondent. It is seen from the records that the vehicle was under hypothication with the third respondent/Canara Bank and there was an agreement prevailing between both the parties regarding paying of premium by the Bank.

13.Since the premium for the period from 17.05.2002 to 16.05.2008, the owner had paid the amount. Thereafter, the third respondent/Bank also paid the premium for the period from 01.06.2007 to 31.05.2008 and it appears that there was an exchange of communication as to the payable premium amount and difference in the policy period.

14. Be that as it may, the date of the accident is 10.08.2008, on the date of the accident, there is no valid policy coverage. It appears that the policy was renewed only on 11.11.2008. In other words, admittedly, there is no policy coverage and, therefore, it is for the owner of the vehicle as to pay the compensation. In other words, the Insurance company, in the absence of any policy coverage on the date of insurance, cannot be mulcted with the liability to pay the compensation and such finding arrived at by the Tribunal, for different reasons, as stated supra, is hereby confirmed.

15. Learned counsel for the second respondent/the owner of the vehicle has contended that since it is duty of the Bank, with whom the hypothecation was made, to pay the premium, they have to be fastened with the liability. In the decision rendered by the Hon'ble Supreme Court in the case of Mangla Ram vs. Oriental Insurance Co. Ltd., and others reported in 2018 (1) TNMAC 681 (SC) and another decision rendered by this Court dated 04.07.2019 in the case of State Bank of India, Salem District vs. M.Chellammal and others in C.M.A.No.684 of 2011, as per the decision, the primary duty of paying premium is on the owner of the vehicle, if Bank has not paid that amount, he has to pay the amount from his pocket. It appears that initially the Bank defaulted in payment of premium amount, the owner had paid the renewal premium policy amount for the period commencing on 17.05.2007. It is seen that both the owner of the vehicle as well as the Bank were not diligent in renewing the policy and had let the policy to expire.

16. In view of the decision of the Hon'ble Supreme Court, cited supra, which was followed by this Court in CMA.No.684 of 2011 dated 04.07.2019, wherein it was held that the owner of the vehicle is liable to pay compensation, the award passed by the Tribunal against the owner of the vehicle is sustainable. In view of the above facts and circumstances of the case, the appeal is dismissed.

17. In the result,

(i) the Civil Miscellaneous Appeal is dismissed by confirming the award of the Tribunal passed dated 18.07.2012 made in M.C.O.P.No.1357 of 2008 on the file of the Motor Accidents Claims Tribunal, 1st Additional Sub-ordinate Judge, Coimbatore.

(ii) The 2nd respondent/Owner of the vehicle is directed to pay the compensation amount as determined before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this Judgement.

(iii) On such deposit being made, the claimant/appellant herein is entitled to withdraw the award amount, by moving appropriate application, as per the direction given by the Tribunal along with interest and costs.

(iv) Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (Admn.II)

/True Copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
1st Additional Sub-ordinate Judge, Coimbatore.

Copy to : The Section Officer, V.R. Section,
High Court of Madras, Chennai - 104.

+1 cc to M/s.C.Veeraraghavan, Advocate Sr.No. 69007

+1 cc to M/s.S.Parthasarathy, Advocate Sr.No.68843

+1 cc to M/s.S.Arun Kumar, Advocate Sr.No. 69328

AKM/14.02.2020/4P-6C/

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