BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.06.2019
CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.195 of 2018
& CMP(MD)No.3034 of 2018

The New India Assurance Co.Ltd.,
Kuppi Towers 594,
TB Road, R.S.Puram,
Coimbatore. ... Appellant/ 2nd Respondent

vs.

1)K.Rajeshwari
2)Minor Viveka
(Minor is represented by 1st respondent Mother)

3)Vijayalakshmi ...1 to 3 Respondents/1 to 3 Petitioners

4)M.Veerappan ... 4th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 22.09.2017 made in MCOP.No.304 of 2014 on the file of Principal District Judge, Dindigul.

For Appellant : Mr.A.Ilango
For R1 to R3 : Mr.S.Govindan
For R4 : No appearance

JUDGMENT

Challenging its liability to pay compensation to the claimants, the appellant insurance company has filed this appeal.

2.The only contention made by the learned counsel for the appellant is that the cheque issued by the 4th respondent herein/owner of the offending vehicle towards premium, was dishonoured by the bankers on 16.11.2013 which was intimated to the 4th respondent and also the Regional Transport Authority vide letter dated 18.11.2013 of the appellant and the said letter was also acknowledged by both of them on 20.11.2013 and six days after the receipt of the letter dated 18.11.2013 intimating the dishonour of the cheque and cancellation of policy, on 26.11.2013, the accident had occurred. Thus, he submitted that on the date of accident, the insurance policy was not in force and therefore, the appellant is not liable to pay compensation, but the Tribunal ordered pay and recovery, instead of totally exonerating the appellant. In support of his contentions, learned counsel relied on the following judgments:-

(i)New India Assurance Co.Ltd., vs. Tara Devi and others reported in 2016 (2) TN MAC 520 (SC).
(ii)National Insurance Co.Ltd., vs. Subhadraben reported in 2016 (2)TN MAC 761 (Guj)
(iii)D.Kala vs. Nalameena reported in 2015 (1) TN MAC 415.

3.Learned counsel for the respondents 1 to 3/claimants would contend that though the insurance policy has been cancelled upon dishonour of the cheque, the claim of third party cannot be defeated for the self-created predicament of the insurer in issuing the policy without actually receiving the premium and considering the fact that the third party claimants cannot be made to suffer, the Tribunal has ordered pay and recovery, which does not require interference by this Court. In support of his contention, he relied on a Division Bench judgment of this Court in New India Assurance Co.Ltd., vs. Azhagusumathi reported in 2015 (1) TN MAC 179 (DB).

4.Heard both sides and perused the records.

5.The only issue to be decided in this matter is when the insurance policy was actually not in force due to dishonour of cheque, whether the Tribunal is correct in ordering pay and recovery. The said issue has been answered by the Hon'ble Supreme Court in a decision reported in 2016 (2) TN MAC 520 cited by the appellant, wherein in similar circumstances, the Apex Court held that insurance policy was cancelled on account of dishonour of cheque after due intimation to the owner about the dishonour and cancellation letter sent to the insured/owner and on the date of the accident, the policy was not in force and therefore, the insurance company is not liable to pay compensation. Consequently, the Apex Court directed that the amount deposited by the insurer shall be refunded.

6.The said decision is squarely applicable to the present case. In this case also, after due intimation to the owner about the dishonour of the cheque, the insurance policy has been cancelled vide letter dated 18.11.2013 of the appellant, which has also been acknowledged by the 4th respondent/owner on 20.11.2013 and after 6 days therefrom, the accident had occurred and on the date of accident namely, 26.11.2013, no insurance policy was in force.

7.Therefore, in view of the judgment reported in 2016 (2) TN MAC 520, the finding of the Tribunal ordering pay and recovery is set aside and the appellant is totally exonerated from its liability to pay compensation. Consequently, the Tribunal is directed to refund the amount deposited by the appellant to the credit of the claim petition. The 4th respondent is directed to pay the entire award amount with interest and costs as awarded by the Tribunal to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 3 are permitted to withdraw their respective shares with interest without filing formal permission petition before the Tribunal. The Tribunal shall deposit the share of the 2nd respondent/minor claimant in a Nationalised Bank in Fixed Deposit until she attains majority. The interest accruing on such deposit is permitted to be withdrawn by the 1st respondent/mother once in three months directly from the bank.

With the above direction, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/ True Copy /

Sub Assistant Registrar(CS-)

To

The Principal District Judge,
Motor Accidents Claims Tribunal,
Dindigul.

Copy To:

1. M.Veerappan,
S/o.Marappan,
16, Lakshmipuram,
Ganapathy,
Coimbatore. **(2 copies)**

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2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1 CC to M/s.S.GOVINDAN, Advocate (SR-69376[F] dated 18/06/2019)
+1 CC to M/s.A.ILANGO, Advocate (SR-69476[F] dated 18/06/2019)

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