BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2019

CORAM:
THE HONOURABLE **MR.JUSTICE KRISHNAN RAMASAMY**
C.R.P.(MD)No.855 of 2018
and
C.M.P.(MD)No.3740 of 2018

National Insurance Company Limited
Rep.by its Divisional Manager
661, Trunk Road,
Poonamallee,
Chennai 600 056 ... Petitioner

Vs.

1.Selvaraj
2.M.Gajendran ... Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the award dated 09.09.2017 settled in Lok Adalat Case No.893 of 2017 (MCOP.No.63 of 2016) on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Trichirapalli, and allow the Civil Revision Petition.

For Petitioner : Mr.J.S.Murali
For Respondents : Mr.N.Sudhagar Nagaraj

**ORDER**

This Civil Revision Petition has been filed to set aside the award dated 09.09.2017 settled in Lok Adalat Case No.893 of 2017 (M.C.O.P.No.63 of 2016) on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Trichirapalli.

2.Brief facts of the case are as follows:

2(i) It is the case of the first respondent/petitioner that on 22.06.2015 at about 06.15 a.m., the first respondent was riding with his friend's motor cycle bearing Registration No.TN-46-E-6691, from his house to Saroja Crusher. When he was reaching opposite to Saroja Crusher, he stopped the motor cycle and waiting to cross the Trichy-Chennai National Highway on the western side edge of the Trichy-Chennai National Highway road at Perumalpalayam, Alathur Taluk. At that time a car bearing Regn. No.TN-22-BE-5134 belonging to the second respondent, which is insured with the petitioner/Insurance Company, came from south to north in a very rash and negligent manner with high speed without obeying traffic rules came to left side end and dashed against the first respondent's motor cycle. Due to the accident, the first respondent sustained grievous injuries. Thereafter, the first respondent herein filed a petition in M.C.O.P.No.63 of 2016 seeking compensation before the Motor Accident Claims Tribunal, Trichirappalli and the same was referred to Lok Adalat, which was held at Tiruchirappalli. The parties were agreed to settle the claim for Rs.4,25,000/-, which is payable by the Insurance Company/petitioner herein.



2(ii) The case of the petitioner/Insurance Company is that the cheque issued by the second respondent herein towards premium for the vehicle was dishonored for "insufficiency of funds" and subsequently, the policy issued by the petitioner to the second respondent was cancelled and intimation was also sent to the second respondent on 18.03.2015. Hence, the Insurance Company is not liable to pay the compensation as awarded by the Lok Adalat.

3.The learned counsel appearing for the petitioner submitted that both the parties participated in the Lok Adalat on 09.09.2007 and an award was passed for a sum of Rs.4,25,000/- to the claimants and they have taken steps to settle the award amount. Thereafter, they came to know about the fact that the policy issued by the Insurance Company was cancelled on 18.03.2015. In their communication, dated 18.03.2015, they have clearly stated that the policy issued on 13.03.2015, was cancelled due to the dishonor of cheque issued by the owner of the vehicle. However, by oversight, they have not noted this fact until the date of passing the lok adalat award. Therefore, he learned counsel for the appellant submitted that the Lok Adalat award is liable to be set aside for the reason that the cheque issued by the owner of the car was dishonored and the thereafter the policy was cancelled vide communication, dated 18.03.2015.

4.On the other hand, the learned counsel for the first respondent / claimant submitted that the petitioner failed to disclose all these facts before the Court below. Even before the Lok Adalat, the revision petitioner herein has not pleaded anything about the dishonor of cheque and the cancellation of the policy. The learned counsel further submitted that the award was passed with the consent of both the parties and therefore, no further remedy by way of appeal has been provided for. Even under Section 96(3) of C.P.C., no appeal shall lie in a decree passed by the Court with the consent of the parties. If there is any liability for the payment, they can take recovery by following due process of law.

5.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6.It is the admitted fact that the appellant/Insurance Company issued the insurance policy which covers the second respondent car on 13.03.2015. The owner of the vehicle has paid the insurance premium by way of cheque. Upon the receipt of the cheque the Insurance Company has issued the policy.



7.At this juncture, it is worthwhile to mention the provision of Section 64-VB of the Insurance Act, which reads as follows:

*''64-VB. No risk to be assumed unless premium is received in advance-(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.*

*(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer. Explanation.- Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.*

*(3) Any refund of premium which may become due to an insured on account of cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.*

*(4) where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.*

*(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories of insurance policies."*

8.It is also relevant to extract Section 147 (5) of the Motor Vehicles Act, 1988, which reads as follows:

*''(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.''*

9.Further, it is also relevant to mention Section 149(1), which reads as follows:

*''(1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause(b) of sub-section (1) of Section 147 being a liability covered by the terms of the policy) (or under the provisions of Section 163A) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.''*

10.In the present case, Despite the bar created by Section 64-VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the car by receiving premium by way of cheque and issued policy immediately upon receipt of the cheque on 13.03.2015. By virtue of Provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, 1988, the petitioner became liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

11.The policy of insurance that was issued by the appellant / Insurance Company is an obligation, upon which the authorities and third parties were entitled to act.

12.It is worthwhile to note down the following passage in the case of ***Montreal Street Railway Company Vs. Normandin, AIR 1917 Privy Council 142***, which reads as follows:

*''When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.”*



13.The learned counsel for the respondent/claimant relied upon a decision of this Court reported in ***2013 (3) CTC 770*** in a case of

***Usha Rani and others Vs. Rajaram and others*** and the relevant portion is as follows:

> *"14.As the award is passed with the consent of the parties, the Award becomes final and that no further remedy by way of appeal has been provided for. Under Section 21(2) of the Legal Services Authorities Act, every Award made by a Lok Adalat shall be final and binding on all parties to the dispute and no appeal shall lie to any Court against the award. Even under Section 96(3), C.P.C., "no appeal shall lie from a decree passed by the Court with the consent of the parties". The award of the Lok Adalat is an award based upon consent of parties and therefore, there is no scope for appeal."*

14.Now the issue to be decided is whether the Insurance policy can be cancelled for the reason of dishonour of the premium cheque issued by the owner of the vehicle?

15.Upon perusal of Section 64-VB of the Insurance Act, it is clear that the Insurance Company shall assume any risk in India in respect of any insurance business on which premium is payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by the owner of the vehicle.

16. In the present case, admittedly, the policy was issued by the Insurance Company upon the receipt of the cheque. The presumption here is that the owner of the vehicle guaranteed by issuing the cheque to pay the premium but the cheque issued was dishonoured, which means the owner of the vehicle went against his promise. However, the Insurance Company has issued the policy. In such being the case, what would be the recourse of the Insurance Company to take action against the dishonoured cheque, when a policy issued by the Insurance Company on the basis of promise made by owner of the vehicle and subsequently, if the owner of the vehicle went against his guarantee to make the premium. The only recourse available to the Insurance Company is to take action against the owner of the vehicle to claim for damages.

17. Further, once the policy is issued, the Insurance Company assumes the risk on behalf of the owner of the vehicle., upon the payment of premium or upon the guarantee provided by the owner of the vehicle, if such guarantee was not complied, the recourse for the Insurance Company for such noncompliance, is only to take action to claim for damages. Therefore, this Court is of the view that the Insurance Company unless or otherwise if both the parties agreed for any such cancellation of the Insurance policy, the recourse to the Insurance Company is not to cancel the policy but to take action for damages against the owner of the vehicle.

18. Apart from the above, in the present case, the award was passed with the consent of the parties. As held in the case of ***Usha Rani and Others Vs. Rajaram and Others,*** (refer citation supra) once

award is passed with the consent of the parties, the award becomes final and no further appeal remedy is provided for. Therefore, the award was passed by way of mutual consent before lok adalat and it cannot be recalled and the same is not applicable.



19.Therefore, there is no merits in the present case. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gns/rj2

To

The Motor Accident Claims Tribunal,
Special Subordinate Court,
Trichirapalli.

Copy to

The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.N.SUDHAGAR NAGARAJ, Advocate ( SR-88698[F] dated 23/09/2019 )

+1 CC to Mr.J.S.MURALI, Advocate ( SR-88804[F] dated 24/09/2019 )

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