

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	07.08.2020
Pronounced On	25.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2817 of 2010

and

M.P.Nos.1 & 2 of 2010

(Through Video Conferencing)

United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai - 2.Appellant/2nd Respondents

Vs.

1.Maragatham ...1st Respondent/Petitioner

2.Minor. B.Kosalraman ...2nd Respondent

rep.by mother and
Next Friend Maragatham

3.S.Natarajan ...3rd Respondent/3rd Petitioner

4.G.Indrakumar ...4thRespondents/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 12.11.2007 made in M.C.O.P.No.3783 of 2000, on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : M/s.N.Rosi Naidu

For R1 and R2 : Mr.M.S.Sivakumar

J U D G M E N T

The Insurance Company is the appellant. It is aggrieved by the impugned Judgment and Decree dated 12.11.2007 passed by the Motor Accidents Claims Tribunal, (III Court of Small Causes, Chennai), Chennai, in M.C.O.P.No.3783 of 2000.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,00,000/- as compensation together with

interest at 7.5% p.a. from the date of numbering of the claim petition till the date of deposit with costs, payable by the appellant Insurance Company, to the 1st to 3rd respondents who were the claimants before the Tribunal. The 1st to 3rd respondents are the wife, the minor child and the father of the deceased N.Balasubramaniam aged about 34 years at the time of accident and death.

3. The case of the 1st to 3rd respondents/claimants before the Tribunal was that on 10.12.1999 at about 23.45 hours, the deceased Balasubramaniam was driving a Auto bearing registration No.TN-01-K-6577 on Poonamallee High Road, near Rohini Theater, when a lorry bearing registration No.TN-23-A-8069 belonging to the 4th respondent, insured with the appellant Insurance Company, driven by its driver in a rash and negligent manner, hit the said auto, as a result of which, the said deceased Balasubramaniam sustained grievous injuries and later died.

4. Before the Tribunal, the appellant Insurance Company filed its counter to distance itself from the liability by denying the allegations that the insured lorry was driven in a rash and negligent manner. It is further submitted that the accident was purely on account of the negligence of driver of the auto, i.e. deceased Balasubramaniam. The appellant Insurance Company has also submitted that the compensation claimed was in excess. The Tribunal framed three points for consideration and answered all the issues in favour of the 1st to 3rd respondents/claimants.

5. Aggrieved by the same, the Insurance Company has filed this Civil Miscellaneous Appeal. In this appeal, it is stated that the 4th respondent owner of the lorry had failed to pay the premium for the Insurance and that on the date of the accident though the policy had been issued in favour of the 4th respondent owner of the lorry, it had also been cancelled and an intimation had also been sent to the 4th respondent owner regarding the cancellation of the policy. It is stated that the policy had expired on 10.09.1999 and that on 20.09.1999, the cancellation of policy was intimated to the 4th respondent owner of the lorry as the cheque given by the 4th respondent owner was later dishonoured and therefore, the appellant Insurance Company cannot be made liable to pay the compensation to the 1st to 3rd respondents/claimants.

6. In this connection, the appellant Insurance Company has also filed M.P.No.2 of 2010 in this appeal to receive the additional evidences to prove their contentions, which was allowed on 07.08.2020. The documents that are filed along with the said application are also follows:-

- i. Original cheque bearing reference No.905034 dated 10.09.1999 for Rs.9,884/- returned by the bank.
- ii. The original cheque dishonour slip/written memo dated 15.09.1999 issued by the bank with the reason "insufficient funds".
- iii. Cancellation intimation and a copy of the Acceptance Advice dated 20.09.1999.

7. It is contended by the appellant Insurance Company that on the date of the accident, the Policy was not in existence and since the intimation had also been issued to the 4th respondent owner of the lorry and had been dispatched, it cannot be made liable. Though the 4th respondent owner had no valid policy, he allowed the insured lorry to ply on the road and got involved in the accident resulting in the death of the said Balasubramaniam. The learned counsel for the appellant relied on the following decisions:-

- i. In Deddappa and others Vs. National Insurance Co. Ltd., reported in (2008) 2 SCC 595, the Hon'ble Supreme Court allowed the case of the Insurance company to pay and recover the amount as the claimants were from the lower strata. The said order was made under Article 142 of Constitution of India.

- ii. In United India Insurance Co. Ltd. Vs. Laxamma and others, reported in (2012) 5 SCC 234, the Hon'ble Supreme Court held as follows:-

27. Having regard to the above legal position, insofar as the facts of the present case are concerned, the owner of the bus obtained the policy of insurance from the insurer for the period 16-4-2004 to 15-4-2005 for which premium was paid through cheque on 14-4-2004. The accident occurred on 11-5-2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13-5-2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on 21-5-2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy the award of compensation passed in favour of the claimants.

8. Per contra, the learned counsel for the 1st to 3rd respondents/claimants stated that the appellant Insurance Company cannot distance itself from liability in as much as there is no proof that the intimation of cancellation of the policy had been sent to the 4th respondent owner of the lorry. It is further submitted that said plea was not taken before the

Tribunal and therefore, same cannot be allowed to be taken now at this stage. The learned counsel for the 1st to 3rd respondents/claimants placed reliance on the following decision:-

i. New India Assurance Co. Ltd. Vs. Azhagusumathi and others, reported in (2015) 1 TN MAC 179 (DB).

ii. Ranju Devi and others Vs. Pawan kumar Patwari and others, reported in 2004 ACJ 230.

9. The learned counsel for the 1st to 3rd respondents/claimants also placed reliance on G.R.24 of MTR. He submits that there was a failure on the part of the appellant to intimate the RTO regarding the cancellation of the policy.

10. I have considered the arguments advanced by the learned counsel for the appellant and the learned counsel for the 1st and 3rd respondents. I have also perused the evidence on record.

11. The 4th respondent had issued a cheque towards premium for renewal of the policy on 10.09.1999 as the policy was existence only till 12.09.1999. The said cheque was however returned on 15.09.1999 by the bankers of the appellant Insurance Company with an endorsement "insufficient fund".

12. The appellant Insurance Company had purportedly issued a notice of cancellation of the policy dated 20.09.1999 to the 4th respondent owner of the vehicle. There is no dispute that the insurance premium was not paid by the 4th respondent owner of the vehicle and therefore, the policy was liable to be cancelled. In this case, it was also said to have been cancelled on 20.09.1999. The accident is dated 10.12.1999, i.e. 80 days after the purported cancellation of the policy. However, there is no proof of cancellation of the policy having been sent to the 4th respondent owner of the vehicle.

13. In National Insurance Company Limited Vs. Seema Malhotra, (2001) 3 SCC 151, the Hon'ble Supreme Court observed as under:-

8. The direction that the Insurance Company can now deduct the premium amount from the compensation to be fixed is no solace to the insurer. The essence of the insurance business is the coverage of the risk by undertaking to indemnify the insured against loss or damage. They agree to pay the damages arising out of any accident by taking a chance that no accident might happen. Motivation of the insurance business is that the premium would turn to be the profit of

the business in case no damage occurs. Such business of the insurance company can be carried on only with the premium paid by the insured persons on the insurance policy. The only profit, if at all the insurance company makes, of the insurance business is the premium paid when no accident or damage occurs. But to ask the insurance company to bear the entire loss or damages of somebody else without the company receiving a pie towards premium is contrary to the principles of equity, though the insurance companies are made liable to third parties on account of statutory compulsions due to the initial agreement, entered between the insured and the company concerned.

14. Ultimately, the Court held as follows in paragraph 20:-

20. However, if the insured makes up the premium even after the cheque was dishonoured but before the date of accident it would be a different case as payment of consideration can be treated as paid in the order in which the nature of transaction required it. As such an event did not happen in this case, the Insurance Company is legally justified in refusing to pay the amount claimed by the respondents.

15. In *United India Insurance Company Limited Vs. Laxamma*, (2012) 5 SCC 234, the Court held that "Having regard to the above legal position, insofar as the facts of the present case are concerned, the owner of the bus obtained the policy of insurance from the insurer for the period 16-4-2004 to 15-4-2005 for which premium was paid through cheque on 14-4-2004. The accident occurred on 11-5-2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13-5-2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on 21-5-2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy the award of compensation passed in favour of the claimants."

16. In the present case, the owner of the vehicle, i.e. 4th respondent, is deemed to be aware of the fact that the cheque issued towards renewal of the policy would have been dishonoured. He was also liable under Negotiable Instruments Act, 1881 to the appellant Insurance Company.

17. The appellant Insurance Company was thus entitled to

distance itself from the liability that could be fastened on it as the 4th respondent owner of the vehicle failed to pay the premium for renewal of the insurance policy. Liability of appellant Insurance Company to pay compensation was contingent on the payment of proper insurance premium by the 4th respondent owner of the vehicle. However, in absence of any direct evidence such as postal receipt of having been sent notice to the 4th respondent or postal acknowledgment or written acknowledgment of service of such notice on the 4th respondent cancelling the policy, the liability undertaken in the policy cannot be repudiated as far as third parties are concerned. Therefore, while upholding the impugned Judgment and Decree, I give liberty to the appellant Insurance Company to recover the amount directly from the 4th respondent owner of the accident vehicle following the decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, (2004) 13 SCC 224.

18. Therefore, the appellant Insurance Company is directed to deposit the amount of compensation together with interest and cost as directed by the Tribunal, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

19. On such deposit, the 1st and 3rd respondents/1st and 3rd claimants are permitted to withdraw their respective share together with interest thereon and costs as directed by the Tribunal, less any amount already withdrawn, by filing suitable application. The 2nd respondent was aged about 9 years at the time of filing of the claim petition in the year 2009 and would have attained the age of majority as on date. Therefore, the 2nd respondent is permitted to file appropriate application before the Tribunal for recording the age of majority to withdraw his share together with interest.

20. The appellant Insurance Company can proceed to recover the amount directly from the 4th respondent owner of the accident vehicle by attaching his assets.

21. Accordingly, this Civil Miscellaneous Appeal is stands disposed of with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

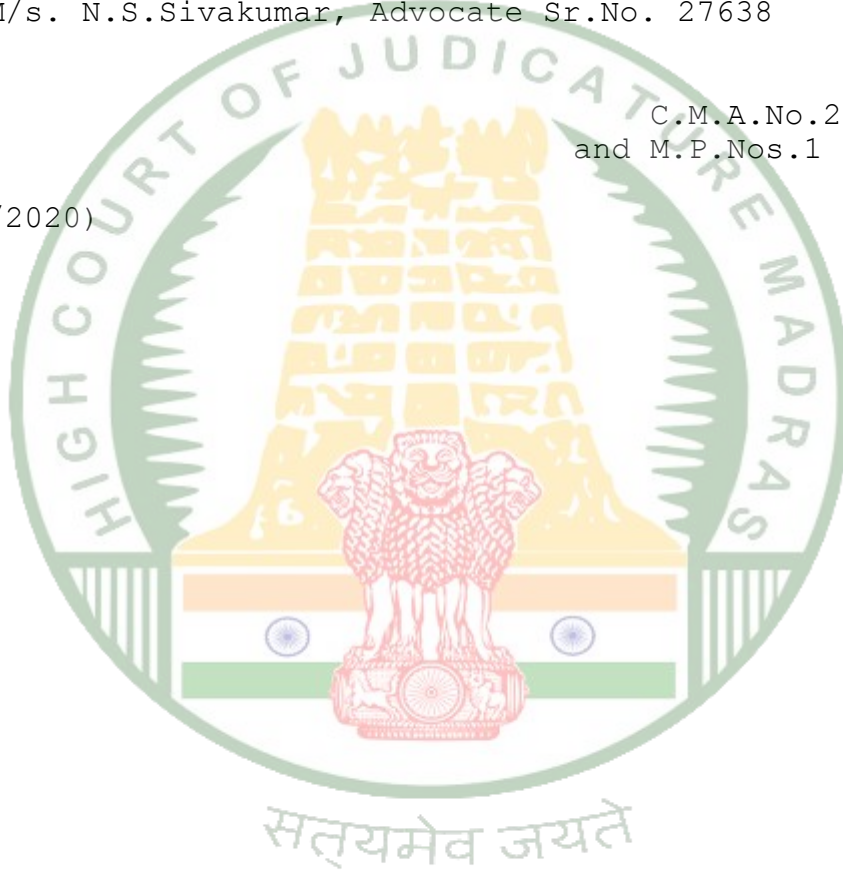
To:
The Motor Accidents Claims Tribunal,
III Court of Small Causes, Chennai.

Copy to:
The Section Officer,
VR Section, High Court Madras

+1 cc to M/s. N.S.Sivakumar, Advocate Sr.No. 27638

VGI (CO)
RMP (10/12/2020)

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and M.P.Nos.1 & 2 of 2010



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