

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.07.2020

Pronounced on: 04.08.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1130 of 2016
and
C.M.P.No.8543 of 2016

M/s.United India Insurance Co.Ltd.,
D.O.3, Sunitha Buildings,
D.B.Road, R.S.Puram Post,
Coimbatore-641 002.Appellant /3rd Respondent

/versus/

1.Smt.Murugammal1st Respondent/Petitioner

2.K.Manikandan

3.Smt.Padmavathy2nd and 3rd Respondents/1 & 2 Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment dated 06.11.2009 made in M.C.O.P.No.712 of 2008 on the file of the Motor Accident Claims Tribunal, (1st Additional Subordinate Judge), Coimbatore.

For Appellant : M/s.Sree Vidhya
For R1 : No appearance
For R2 & 3 : Exparte

J U D G M E N T
सत्यमेव जयते

(The case has been heard through video conference)

The appeal under section 173 of the Motor Vehicle Act, 1988 is filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal, Coimbatore in M.C.O.P. 712 /2008, dated 06.11.2009.

2. On 21.05.2008 at about 8.30 hrs one Murugammal, a self employed agricultural worker was run over by the passenger bus bearing registration No. TN 37 Y 9007 near Ukkadam Fish Market, Coimbatore. She sustained fracture of her left foot, multiple abrasions and lacerations all over her body. First aid

was given at Coimbatore Government College Hospital and later treated at Rex Ortho Hospital, Coimbatore. Alleging rash and negligence on the part of the bus driver, claim petition for Rs 2,00,000/- was filed against the bus driver, the owner of the vehicle and the insurance company.

3. The driver and the owner of the vehicle remained absent and set exparte. The insurance company contested the claim on the ground that at the time of accident, the vehicle was not insured under them. The insurance policy No. 170300/31/06/0000893 for a period from 29.03.2007 to 28.03.2008 for the vehicle TN 37 Y 9007 lapsed on 28.03.2008 midnight. At the time and date of the accident the vehicle had no insurance cover. Suppressing the factum of accident, after the accident on 21.05.2008 at 8.30 am, the vehicle owner had presented the insurance proposal along with a cheque for Rs. 29,801/- towards the premium. The cheque sent for collection returned with intimation memo "insufficient fund". Immediately the vehicle owner and the RTO of that region was informed about the cancellation of policy. Without supporting document for valid license of the driver and valid insurance coverage for the vehicle, the insurance company is not liable to pay any compensation. Further the quantum of claim was also disputed as excessive.

4. To substantiate their respective case, the claimant deposed as PW-1 and marked 14 exhibits. On behalf of the Insurance company one witness and 8 exhibits were marked. The Tribunal rejected the insurance company plea and awarded compensation of Rs 1,48,500/- with interest at the rate of 7.5% payable by the respondents 1 to 3 jointly and severally.

5. Aggrieved by the award dated 06.11.2009, the appeal was admitted on 07.06.2016, condoning 1965 days delay in representation. At the time of admission, this court also granted interim stay of award on condition the appellant should deposit the entire award amount to the credit of M.C.O.P.No.712/2008 account with liberty to the claimant for withdrawal of 50% from it.

6. The notice to first respondent served on 02.07.2016. The second respondent was served on 15.06.2016. The third respondent did not claim the notice hence returned unserved. None of them engaged counsels.

7. After four years, the matter is taken up for final disposal through video conference.

8. The learned counsel for the appellant submitted that, on the date (21.05.2008) and the time (8.30 hrs.) of accident there was no privity of contract between the vehicle owner and the insurance company. The policy proposal accepted by 21/05/2008 is void ab-initio since the conduct of the insured is in violation of the principle "ubirriuma fides". The Tribunal failed to take notice of the fact that there was no policy at the time of accident. Further it neglect to consider Ex.B-3 intimation of the Canara Bank about insufficiency of fund, Ex.B-5 Intimation letter to the owner and Ex B-7 intimation to the RTO about the cancellation of policy.

9. The learned counsel for the appellant also submitted that, the Tribunal observation that, the insurance company had failed to produce its investigation report and the police had not prosecuted the vehicle owner for running the vehicle without insurance is contrary to the settled principle of law of insurance and judicial pronouncements. The conclusion of the Tribunal that it has to be believed that the vehicle which was insured for the year 2007-2008, ought to have valid insurance-cover on 21.05.2009 is based on surmises and conjuncture hence liable to be set aside.

10. The point for consideration in this appeal is whether the insurance company is liable to indemnify the insured who has suppressed the accident and taken a policy for his vehicle, more so when the cheque issued for premium bounced back for insufficiency of fund.

11. The undisputed facts of the case is that on 21.05.2008 at 8.30 am Smt. Murugammal met with the road accident. The offending vehicle was driven by Manikandan and the owner of the vehicle is Smt. Padmavathy. The FIR was registered at 11.00 am based on the complaint given by K.P.Rangasamy the husband of the accident victim. The claimant has not filed any document to show that the vehicle was insured under the appellant company. The motor vehicle inspector after inspection of the vehicle TN 37 Y 9007 has given his report in FORM A.I.R (Ex.P-4). The Motor Vehicle Inspector Report, Column 11 of the FORM A.I.R, for Date of expiry of insurance certificate, Name and address of the company which issued policy in respect of vehicle and the policy number, only date is mentioned as 20.05.2009 and United India Insurance, is shown as company which

issued the policy. The policy number is not mentioned. The conspicuous absence of the policy number is relevant and significant for the reason that Ex.R-1, relied by the insurance company goes to show that the vehicle TN 37 Y 9007 was insured under the policy No.170300/31/06/00008983 and the period of insurance was from 00.00 hrs on 29.03.2007 to midnight 28.03.2008. The other documents like Ex.R-5 and Ex.R-7 would prove that new policy No. 170300/31/08/01/00001144 (collection No.170300/01/00/00001540 dated 21.05.2008) was cancelled after the cheque presented for collection got dishonoured. The Insurance Company had intimated the vehicle owner and the RTO about the cancellation of policy from inception i.e., 21.05.2008 and they are no longer responsible for the risk.

12. The Insurance Company beside establishing that the premium for insurance was tendered after the accident, had also filed documents Ex.R-5 to show that on receipt of the intimation Ex.R-3 from the Canara Bank (insured bank) and Ex.R-4 from HDFC bank (insurer bank) about the return of the cheque unpaid, it had informed the insured Mrs. Padmavathi vide letter dated 17.06.2008 that, payment of premium against policy No. 170300/31/08/01/00001144 (collection No. 170300/01/00/00001540 dated 21.05.2008) Registration No.TN 37 Y 9007 vide cheque No.580920 returned uncleared for reason "FUND INSUFFICIENT". The policy/collection stands cancelled since inception and they are not at risk in respect of the above policy and certificate of insurance. In Ex.R-7, the RTO also had been intimated about the cancellation of policy on similar line.

13. Thus, the Insurance Company through Ex.R- 2, Ex.R-5 and Ex.R-7 has placed before the Tribunal ample evidence to show the vehicle was not insured at the time of accident and the insurance issued after accident was cancelled due to want of consideration. Though there was no evidence contrary to the above fact, the Tribunal has held that the coverage of insurance at the time of accident is presumable. Probably the Tribunal would have thought that the insurance on a particular date deemed to have commenced from 00.00 hrs of date on which the date it bears.

14. In United Fire and General Insurance Co Ltd -vs- V.Srinivasan [1980 ACAJ 413 (DB)] the question of effective date of policy came for consideration since, the insurance policy was issued on 06.06.1969 and the accident had taken place at 8.00 am on that day. It was not established that the owner of the lorry was aware of the accident when insurance policy was taken at 11.00 am on 06.06.1969. The Division Bench of this Court held that the insurance company is liable to pay the compensation.

15. In Oriental Insurance Co. Ltd -vs- Inderjit Kaur case (1998 (1) SCC 371), when the issue of insurer liability towards third parties for the unpaid premium came for consideration, the Apex Court held that,

"10. Despite the bar created by section 64 VB of the Insurance Act, the appellant, an authorized insurer, issued a policy of insurance to cover the bus without receiving the premium therefore. By reason of the provisions of section 147(5) and 149(1) of the Motor vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured".

11. The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured."

Referring the above judgment, the Hon'ble Supreme court in New India Assurance Co.Ltd -vs- Rula and ors [AIR 2000 SC 1082], held that,

" The subsequent cancellation of the Insurance Policy in the instant case on the ground that the cheque through which premium was paid was dishonoured , would not affect the rights of the third party which had accrued on the issuance of the Policy on the date on which the accident took place. If, on the date of accident, there was a Policy of Insurance in respect of the vehicle in question the third party would have a claim against the insurance company and the owner of the vehicle could have to be indemnified in respect of the claim of that party. Subsequent cancellation of insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party".(emphasis added).

16. When identical question came up for consideration before the Supreme Court in National Insurance Co. Ltd -vs- Seema Malhotra and others [2001 (3) SCC 151] the Hon'ble Supreme court held that,

"17. In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.

18. Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation.

19. Under Section 25 of the Contract Act an agreement made without consideration is void. Section 65 of the Contract Act says that when a contract becomes void any person who has received any advantage under such contract is bound to restore it to the person from whom he received it. So, even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured, the insurer is entitled to get the money back.

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."

17. In Deddappa and others -vs- The Branch Manager, National Insurance Co Ltd (2008 SC 767), the Court observed that, the dicta of the Supreme court in Rula case, clarifies

that if on the date of accident the policy subsists, then only the third party would be entitled to avail the benefit thereof.

In Deddappa case, the Hon'ble Supreme court had further said that,

"26. We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-A-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.

27. A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In Regional Director, Employees' State Insurance Corporation, Trichur V. Ramanuja Match Industries MANU/SC/0203/1984 : (1995) 1 LLJ 69 SC, this Court held:

We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme".

18. After considering the earlier judgments in Inderjit Kaur case, Rula case and Deddappa case, the Supreme Court in United India Insurance Co. Ltd -vs- Laxmamma [AIR 2012 SC 2817] settled the legal position in the following terms:

"19. Where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149 (1) of the M.V.Act unless the policy of insurance is cancelled by

the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."

19. In the instant case, the sequence of event as found from records are :

Insurance cover expired on 28/03/2008 (midnight). The accident occurred on 21/05/2008 at 8.30 am. The insurance premium tendered on 21/05/2008 after the accident, since office opens only at 10.30 am. The cheque presented on the next day. Intimation about the insufficient fund is issued by the bank on 14.06.2008. Thereafter, the intimation about the cancellation of policy is sent to the insured and RTO on 17.06.2008.

20. From the above sequence there can be no doubt that at the time of accident, no right accrued to the third party. So, no liability on the authorized insurer to indemnify third parties arise. The privity of contract between the vehicle owner and the insurer severed at the stroke of 28.03.2008 midnight. The revival of insurance contract by tendering the cheque cannot date back the contract. More particularly, when the revival followed the accident. The deeming fiction to push back the time of insurance to 00.00 hrs of the date of insurance is not applicable when there is suppression of fact.

21. As submitted by the learned counsel for the appellant, contract of insurance is governed by the principle of "Uberrima fides" (utmost good faith). The insured in the instant case has obviously plying his passenger bus without insurance cover from 29.03.2008 to 21.05.2008. After the accident at 8.30 am on 21.05.2008, suppressing the material fact of the accident and registration of FIR to the effect, she has tendered a cheque without fund. Obtaining a insurance cover by fraud and non disclosure of material fact is void under section 149 (2) (b) of the Motor Vehicles Act.

22. The Tribunal has held that the motor accident victim is entitled for a sum of Rs 1,48,500/- as compensation, which the owner of the vehicle and the insurance company jointly and severally to pay. This court is not inclined to interfere with the award amount. However, the fixation of the liability on the appellant / Insurance Company is bound to be interfered for the reasons stated above. Instead of exonerating the Insurance Company which has established lack of privity of contract at the time of accident, the Tribunal has held the company along with the vehicle owner jointly and severally liable to pay the compensation. As a result, after preferring the appeal before this court, the appellant has deposited the entire award amount with interest. The claimant was also permitted to withdraw 50% of it without any formal petition. At this distant point of time, it may not be appropriate to upset the apple cart.

23. Therefore, the appeal allowed with following directions:-

(i) The appellant is exonerated from liability.

(ii) The appellant is permitted to get back the money whatever left in the Court deposit made pursuant to this Court order dated 07.06.2016 in C.M.P.No.8543/2016.

(iii) The amount withdrawn by the claimant can be recovered by the appellant with interest of 7.5 % from the vehicle owner. The claimant / first respondent herein is at liberty to proceed against vehicle owner for the balance award amount.

24. Accordingly the Civil Miscellaneous Appeal is allowed. No order as to costs. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-

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Assistant Registrar(CS VI)

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Sub Assistant Registrar

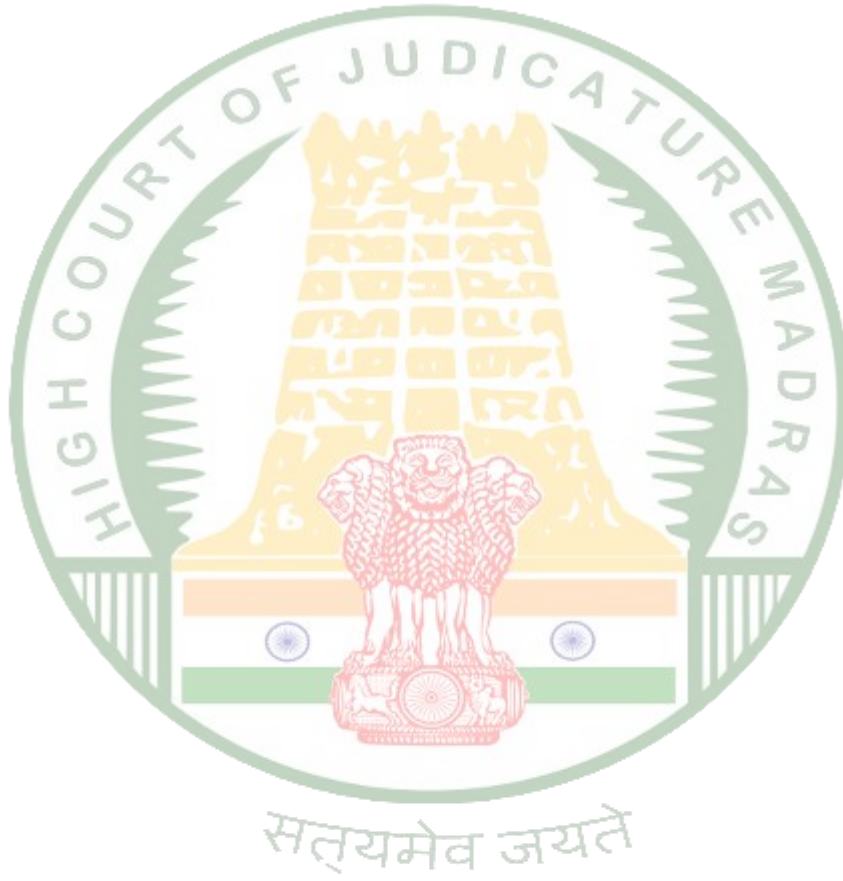
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To

1.The(1st Additional Subordinate Judge),
Motor Accident Claims Tribunal,
Coimbatore.

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

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