



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 09.12.2020

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1261 of 2016

M.Kamalanathan,
S/o.Muruga Gounder,
Sathiyamangalam Village and Post,
Vellore Taluk and District.

.. Appellant/Claimant

/versus/

1. Manokaran,
S/o.Vinayaga Mudaliar,
No.8/1A, Salavanpalayam,
Arugathampoochi,
Thottapalayam, Vellore.

2. The United India Insurance Company Ltd.,
Gandhi Nagar, Vellore.

3. Jayandhi Selvarajan,
M/s.Kavitha Agencies,
No.40, Salem Main Road,
Attur Town, Salem District.

4. The National Insurance Company Ltd.,
No.64, Nehruji Road,
Villupuram.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, praying to set aside the judgment and decree dated 16.12.2015 made in M.C.O.P.No.359 of 1994 on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri.

For Appellant	: Mr.Siva Kumar
For R2	: Mrs.I.Malar
For R4	: Mr.S.Arun Kumar
For R3 & R1	: No appearance

J U D G M E N T

(The case has been heard through video conference)

This Appeal is filed by the claimant challenging the award of the Tribunal exoneration the insurer and fixing the liability on the insured/vehicle owner.



2. The facts of the case is that, on 28.05.1991, when the petitioner was on duty as a cleaner in a lorry bearing registration No.T.N.J.9904, at about 9.30 p.m on Salem to Dharmapuri main road, a lorry bearing registration No.T.L.S.5511 proceedings towards Salem, dashed against the petitioner lorry near Vellakal, about 6 km from Thoppur. In the head on collision of two lorries, the petitioner sustained the following injuries. (i).Swelling around left dorsal aspect Tenderness. (ii). Lacerated injury on left foot near lateral border 10x1x2cm bone protruding (iii).Lacerated injury front of right leg 6 x1x1cm (iv).Dislocation of 4th and 5th Metatarsal bones and dislocation of 2nd M.P. Joint. At the time of accident, the petitioner was earning a sum of Rs.5,000/- and maintaining his family. Due to the injury, he was not able to go for work, for nearly 1 year. Hence, compensation of Rs.1,50,000/- was sought.

3. In the counter filed by the 2nd respondent, it is contended that the lorry bearing registration No.T.N.J.9904 was not insured under them. Furthermore, the accident has occurred due to the negligence of the lorry driver bearing registration No.T.L.S.5511. A Criminal case was registered against him, he was charge sheeted. That apart the compensation claimed by the petitioner is exorbitant and exonerated.

4. In the counter filed by the 4th respondent/Insurance Company, it was contended that the lorry bearing registration No.T.L.S.5511 on the date of accident, the vehicle was not under coverage of insurance. The premium paid through cheque for the vehicle got bounced. Therefore, the policy issued for the period covering from 29.06.1990 to 28.06.1991 was cancelled, same was intimated to the owner of the vehicle the 3rd respondent. Since, there was no insurance coverage, on the date of accident, the Insurance Company is not liable to indemnify the 3rd respondent. Further, attributing negligence on the part of the lorry driver bearing registration No.T.N.J.9904, in which, the claimant was travelling, the 4th respondent denied their liable to pay any compensation to the petitioner. The 3rd respondent, is the owner of the lorry bearing registration No.T.L.S.5511.

5. The sum and substance is that, when the claimant attributed negligence on the part of the driver lorry bearing registration No.T.L.S.5511, the insurer of the said lorry, who is the 4th respondent submitted that the vehicle was not under the Insurance coverage of their company, on the date of accident. The policy was recalled due to bouncing of the cheque issued for the premium. The other Insurance company denied the contractual liability with the owner of the lorry bearing registration No.T.N.J.9904, in which, the claimant was travelling as cleaner and also attributed the entire negligence on the driver of the lorry bearing registration No.T.L.S.5511.



6. The Tribunal, after considering the evidence held a sum of Rs.90,000/- payable by the owner of the lorry bearing registration No.T.L.S.5511. The insurer of the lorry was exonerated, since the cheque paid towards premium was bounced and same was intimated to the 3rd respondent and RTO for withdrawal of policy.

7. Relying upon Ex.R.6 and Ex.R.2, Premium Register, the Tribunal held that on the date of accident, the lorry bearing registration No.T.L.S.5511 had no valid insurance coverage.

8. In the appeal, the claimant submit that, the accident occurred due to head on collusion of two lorries, one insured under 2nd respondent and another insured under 4th respondent. Both the lorry drivers are equally negligent. Just because F.I.R was filed against the driver of the 3rd respondent vehicle, the Tribunal has fixed the liability on the 3rd respondent since on the date of accident, the vehicle had no insurance coverage. The claimant, who has suffered fracture in left foot, awarded only a sum of Rs.90,000/- for the disability. The Tribunal ought to have awarded more under the disability and also under other non-conventional heads compensation ought to have granted.

9. The Learned Counsel appearing for the 4th respondent submitted that based on the proposal submitted by the lorry owner bearing registration No.T.L.S.5511 along with the cheque, the Insurance policy was issued covering the period 29.06.1990 to 28.06.1991. Subsequently, the cheque issued by the vehicle owner (3rd respondent), dishonoured. Immediately, the policy was cancelled and same was intimated to the vehicle owner by Registered Post. When there is no subsisting contract of insurance on the date of accident, the Tribunal rightly exonerated the 4th respondent and fixed the liability on the 3rd respondent, the owner of the offending vehicle.

10. The Learned Counsel appearing for the claimant/appellant submit that in this case the accident occurred not only due to the negligence of the lorry driver bearing registration No.T.L.S.5511, it was the contribution of the driver of the lorry bearing registration No.T.N.J.9904 also. Hence, the insurer of the vehicle bearing registration No.T.N.J.9904 also liable to share the liability. Further, the insurance coverage for the lorry bearing registration No.T.L.S.5511 was cancelled only subsequent to the accident for bouncing of cheque. On the date of accident, the insurance was in force and therefore, the 4th respondent is liable to pay and recover from the insured.



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11. In this connection, the Learned Counsel for the 4th respondent submitted that the accident took place in the year 1991 and based on the law prevailing at that point of time, the Tribunal has rightly exonerated the insurance Company. The principle of pay and recovery will not apply in this case since, at the time of accident there was no contractual liability between the 4th respondent insurer and 3rd respondent insured.

12. In National Insurance Company Limited Vs. Seema Malhotra and others reported in MANU/SC/0112/2001, when the identical issue came up for consideration, the Hon'ble Supreme Court has held as below:-

"17. In a contract of insurance when an insurer 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, 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



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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."

13. The above dictum was reiterating in the subsequent judgment of the Hon'ble Supreme Court in Deddappa and others vs. The Branch Manager, National Insurance Company Limited reported in MANU/SC/4587/2007.

14. In this case, the evidence clearly proves that the accident due to negligence of the driver of the 3rd respondent vehicle. The Insurance coverage for the said vehicle was not in force on the date of accident. Therefore, the 3rd respondent alone is vicariously liable for the tort committed by her servant. Hence, this Court finds no error in the Tribunal award.

15. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1. The Motor Accident Claims Tribunal,
Additional District Court, Dharmapurai.

Copy To
The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.I.Malar, Advocate, S.R.No. 40517
+1cc to Mr.M.Sivakumar, Advocate, S.R.No.40144
+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 40159

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CP(CO)
GN(27/08/2021)