IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2247 of 2012
and
MP No.1 of 2012

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
No.45 & 46, Whites Road,
Chennai - 600 014. ...Appellant/2nd Respondent

Versus

1. S.Karthick (Minor)
Rep. By his father &
next friend Siva

2. M.Rajendran ...Respondents/Petitioner and 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.455 of 2009, dated 31.01.2012 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.Rajadurai
for
Mr.N.Vijayaraghavan

For Respondents : M/s.C & K Law Firm for R1 - NA
R2 - Exparte in Tribunal

JUDGMENT
(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the Insurance Company challenging the impugned award dated 31.01.2012 passed by the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai in MCOP No.455 of 2009.

2. The appellant / Insurance Company has challenged the impugned award on the ground that they are not liable to compensate the first respondent / claimant, since the insurance

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policy issued to the second respondent, who was the owner of the vehicle was cancelled by them on account of non payment of insurance premium.

3. Before the Tribunal, the appellant / Insurance Company has filed three documents, which were marked as Exs.R1 to R3 and one witness was examined on their side viz., their Executive Legal as RW1. The accident happened on 23.01.2009 at 13.00hours. The Insurance policy viz., Ex.R1 is dated 10.01.2009 and it gives coverage for the insured vehicle till 09.01.2010. However, the cheque issued by the second respondent who is the owner of the vehicle towards the insurance premium payable for the policy got dishonoured for insufficiency of funds on 17.01.2009 and the dishonoured cheque was also marked as Ex.R2 before the Tribunal. The appellant / Insurance company has also issued a legal notice to the second respondent on 23.01.2009(being the date of the accident), who is the owner of the vehicle intimating him that the cheque issued by him towards the payment for the insurance premium has been returned dishonoured.

4. However, as seen from the evidence available on record, the appellant / insurance company has not adduced evidence at what time on 23.01.2009, the policy was cancelled in view of the dishonour of cheque issued by the second respondent towards payment of insurance premium. Since, the date of the accident and the date of the legal notice (Ex.R3) are one and the same, the appellant / Insurance Company ought to have adduced proper evidence to substantiate their contention that they are not liable to compensate the first respondent / claimant on account of the cancellation of the insurance policy due to non payment of premium by the first respondent / claimant.

5. The Tribunal under the impugned award has rightly held that the appellant / Insurance company is liable to compensate the first respondent / claimant since admittedly, the policy (Ex.R1) was issued by the appellant on 10.01.2009, which is valid upto 09.01.2020. However, the Tribunal has failed to take note of the fact that the appellant has been able to establish before the tribunal through Exs.R2 and R3 as well as through the deposition of RW1 that the insurance policy was cancelled on 23.01.2009 through a legal notice Ex.R3. The second respondent, the owner of the vehicle and the insured has remained ex-parte before the tribunal despite service of notice on him. The evidence available on record before the tribunal as seen from R1 to R3 as well as deposition of RW1 will clearly establish that the insurance policy for the subject vehicle was cancelled by the appellant on account of non payment of the insurance premium, which is established through Exs.R2 and R3.

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6. Insofar as the quantum of compensation is concerned, the appellant has not challenged the same in this appeal and therefore, the total compensation awarded by the Tribunal amounting to Rs.1,01,000/- to the first respondent is confirmed and there is no scope for interference in this appeal. Since, the insurance policy was cancelled by the appellant, the Tribunal ought to have considered the same and ought to have granted pay and recovery rights to the appellant. However, as seen from the impugned award, the Tribunal has failed to appreciate the oral evidence adduced by RW1 and has also failed to consider Exhibits R1, R2 and R3. If the same was properly considered by the Tribunal, necessarily pay and recovery rights will have to be granted to the appellant. This Court is of the considered opinion that in view of the aforesaid reasoning, the appellant / Insurance Company is legally entitled for pay and recovery rights i.e., they need to pay the first respondent / claimant, the compensation awarded by the Tribunal under the impugned award and recover the same from the second respondent / owner of the vehicle.

7. The second respondent has remained ex-parte before the tribunal.

8. The Hon'ble Supreme Court in the case of United India Insurance Company Ltd., Vs. Laxmamma & Ors. reported in 2012 5 SCC 234 held that in cases, where the Insurance Company has cancelled the insurance policy after the date of the accident due to the non payment of premium, the liability of the insurance company to the claimant does not cease, but however they are entitled to pay and recovery rights. The Hon'ble Supreme Court confirmed the pay and recovery rights granted by the High Court to the Insurance Company.

9. The Full Bench of Madhya Pradesh High Court in the case of Smt.Jamuna Bai and others versus Chhote Singh and Ors. reported in 2004 ACC 190, 2004, ACJ 352 has also held that when the owner of the vehicle has remained ex-parte before the Tribunal, notice to him in the appeal can be dispensed with by the High Court.

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10. In the instant case also, the second respondent who is the owner of the vehicle was set ex-parte before the Tribunal and following the aforesaid decision of the Full bench of Madhya Pradesh High Court, this Court dispenses with the notice to the second respondent.

11. The appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already

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deposited to the credit of M.C.O.P. No.455 of 2009, on the file of the Motor Accidents Claims Tribunal, (III Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall deposit the same in Fixed deposit in any one of the Nationalized Banks, till the first respondent / minor claimant attains the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank. If the first respondent / minor claimant attained the age of majority, it is open to him to file formal petition before the Tribunal.

12. It is made clear that the appellant / Insurance Company shall deposit the award amount before the Tribunal, which is payable to the first respondent / claimant and thereafter, they can recover the same from the second respondent / owner of the vehicle by following the due procedure established under law.

13. For the foregoing reasons, the appeal shall stand partly allowed by granting pay and recovery rights to the appellant / Insurance Company. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1.The III Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal),
Chennai.

2.The Section Officer,
V.R. Section, High Court of Madras, Chennai - 104.

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SR(CO)
SP(29/10/2020)

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