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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.09.2020
PRONOUNCED ON : 07.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.274 of 2013

TATA AIG General Insurance Co.Ltd.,
Jaya Enclave, Avinashi Road,
Near Anna Statue, Coimbatore.

...Appellant/3rd Respondent

vs.

1.Palaniammal

2.Velusamy

3.Rangasamy

...1 to 3 Respondents/Petitioners

4.Kaliyuga Pandiyan

5.K.Sundara Pandiyan

...4 & 5 Respondents/1 & 2 Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment in M.C.O.P.No.1140 of 2011, dated 10.08.2012 on the file of the Motor Accidents Claims Tribunal, 5th Additional District and Sessions Judge, Coimbatore.

For Appellant :Mr.E.Rajadurai for
M/s.N.Vijayaraghavan

For Respondents:Mr.Ma.P.Thangavel for R1 to R3

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the Award dated 10.08.2012, passed by the Motor Accident Claims Tribunal, 5th Additional District and Sessions Judge, Coimbatore, in M.C.O.P.No.1140 of 2011.

2. The Appellant / Insurance Company has challenged the Award on the following grounds:



a) The Tribunal failed to consider the fact that on the date of accident i.e., on 23.09.2010, there was no insurance policy in force and the subject vehicle was insured with the Appellant only subsequent to the accident for the period from 28.09.2010 to 27.09.2011.

b) The Tribunal has erroneously directed the Appellant to pay compensation to the claimants and recover the same from the 4th and 5th respondents who are the driver and owner of the insured vehicle respectively.

3. Heard Mr.E.Rajadurai learned counsel representing Mr.N.Vijayaraghavan, learned counsel for the Appellant and Mr.Ma.P.Thangavel, learned counsel for the respondents 1 to 3. The respondents 4 and 5 have remained exparte both before the Tribunal as well as this Court.

4. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	Award Amount (Rs.)
Loss of income	1,20,000/-
Loss of consortium	10,000/-
Loss of love and affection	15,000/-
Funeral Expenses	5,000/-
Transportation	5,000/-
Total	1,55,000/-

5. Before the Tribunal, the claimants who are the respondents 1 to 3 have filed only one document namely Ex.A1, FIR and two witnesses were examined namely the third respondent as PW1 and an eye-witness to the accident as PW2. On the side of the Appellant insurance company one document was filed namely the insurance policy Ex.B1 and one witness was examined namely RW1, an official of the insurance company, before the Tribunal.

6. The learned counsel for the Appellant would submit that it is settled law that when there is no insurance coverage for the vehicle on the date of the accident, the Insurance Company cannot be made liable to pay the compensation. He drew the attention of this Court to the oral evidence adduced by RW1, the official of the Appellant / Insurance Company and Ex.B1 - the insurance policy of the subject vehicle which was involved in the accident. He submitted that the accident happened on



23.09.2010, but as per Ex.B1, insurance policy, the insurance coverage for the subject vehicle is only for the period between 28.09.2010 to 27.09.2011. Therefore, he would contend that the Tribunal has erroneously mulcted the liability on the Appellant and has also erroneously granted pay and recovery rights under the impugned Award.

7. In support of his submissions, the learned counsel for the Appellant/insurance company would rely upon the following authorities:

(a) A decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Sobina Iakai and others reported in (2007) 7 SCC 786.

(b) A decision of a learned Single Judge of this Court dated 27.11.2019 passed in C.M.A.Nos.2319 of 2004 and 661 of 2007.

Relying upon the aforesaid decisions, the learned counsel for the Appellant would submit that the Tribunal ought to have exonerated the Appellant / Insurance Company from any liability since there was no insurance coverage on the date of the accident i.e., on 23.09.2010.

8. Per contra, the learned counsel for the respondents 1 to 3 / claimants would rely upon the following decisions:

a) A decision of the Hon'ble Division Bench of this Court in the case of United India Insurance Company Limited vs. R.Venkateshan and another reported in 2004 (2) TN MAC 309(DB).

b) A decision of the Hon'ble Supreme Court in the case of Narcinva V.Kamat and another vs. Alfredo Antonio Doe Martins and others reported in (1985) 2 SCC 574.

c) A decision of a learned Single Judge of this Court dated 19.09.2018 in the case of National Insurance Company Limited vs. P.Suresh reported in 2018 (2) TN MAC 499.

Relying upon the aforesaid decisions, the learned counsel for the respondents 1 to 3 would submit that the claimants have discharged their initial burden by disclosing the name of the Appellant / Insurance Company who according to them was the insurer for the subject vehicle at the time of the accident in column No.16 of their claim petition. According to him, the claimants have discharged their initial burden and it is for the Appellant / Insurance Company to establish before the Tribunal that there was no insurance coverage on the date of the accident. According to him, the Tribunal has rightly mulcted the liability on the part of the Appellant / Insurance Company under the impugned Award.



Discussion:

9. The learned counsel for the claimants/ respondents 1 to 3 had relied upon a Division Bench judgment of this Court referred to supra which is reported in 2004 (2) TN MAC 309 (DB). Infact, the said decision supports the case of the Appellant / Insurance Company rather than the claimants. In the said judgment, the Division Bench has issued the following directions:

- (i) the officer-in-charge of the police station/investigating officer as soon as any information regarding any accident involving death or bodily injury to any person is recorded, shall forward a copy of the report/complain within 30 days from the date of recording of the information to the Claims Tribunal having jurisdiction, and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within 30 days of receipt of such report, forward the same to such Claims Tribunal having jurisdiction and insurer.
- (ii) It is the duty of the registering authority or the officer-in-charge of a police station, on request by a person who is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, to furnish all the particulars of the vehicle, name and address of the persons who were using the vehicle at the time of the accident, details of the property damaged.
- (iii) It is the duty of the police officer-in-charge of investigation to gather full particulars of the insurance certificate in respect of the motor vehicle involved in the accident and furnish them to the injured or to the legal representative of the deceased. If any fee has been prescribed, the same has to be paid by the party concerned.
- (iv) The officer investigating the accident after a case is registered, shall forward copies of first information report relating to the accident to the Claims Tribunal having jurisdiction, president of the District Committee for Legal Aid and Advice. The officer of the Transport Department inspecting the vehicle (MVI) involved in an accident shall also furnish immediately the information, i.e., the name and address of the owner of the vehicle, name of the driver and/or conductor, registration number of the vehicle, particulars of permits, if any, in respect of the vehicle, with validity, date of expiry of fitness certificate, and date of expiry of the insurance to the Insurance Company with which the vehicle is insured.



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(v) The claimants are duty bound to furnish correct registration number of the vehicle, full insurance particulars as furnished by the police officer/investigation officer. If details are wanting at the time of filing off the claim petition, it is the duty of the claimants to ascertain all those particulars either from the police officer/investigation officer or from the Motor Vehicle Inspector of the Transport Department or from the Tribunal having jurisdiction and mention those particulars in the claim petition.

(vi) If the insurance company feels that the particulars furnished in the claim petition are not correct or not sufficient, it shall ascertain the necessary details from the police officer/investigation officer concerned or from the officer of the Motor Vehicle Inspector, and prove its case by positive evidence.

As seen from Direction No.V issued by the Division Bench of this Court, it is clear that the claimants are duty bound to furnish the correct Registration Number of the vehicle and full insurance particulars.

10. In the case on hand, admittedly the claimants in their claim petition as found in column - 16 have disclosed only the name of the Insurance Company but have not disclosed the full insurance particulars like policy number, period of insurance etc. The claimants have also not adduced any evidence before the Tribunal with regard to the steps they had taken to obtain the full insurance particulars of the subject vehicle which was involved in the accident. It has also been the consistent stand of the Appellant / Insurance Company before the Tribunal as seen from their counter statement as well as from their oral and documentary evidence that the subject vehicle did not have insurance coverage on the date of the accident i.e., on 23.09.2010 and the insurance policy was issued only subsequently which gives coverage to the subject vehicle only for the period from 28.09.2010 to 27.09.2011 i.e., for the period after the accident. The Appellant / Insurance Company has also filed the insurance policy (Ex.B1), which confirms the contention of the Appellant that on the date of the accident, there was no insurance coverage for the subject vehicle. The evidence adduced by RW1, an official of the Appellant / Insurance Company also supports the contention of the Appellant / Insurance Company and there is no contradiction whatsoever. For the foregoing reasons, the Division Bench judgment of the Madras High Court reported in 2004 (2) TN MAC 309 (DB) relied upon by the learned counsel for the Claimants infact supports the contention of the Appellant / Insurance Company rather than the claimants.



11. The judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the claimants in the case of Narcinva V.Kamat and another vs. Alfredo Antonio Doe Martins and others reported in (1985) 2 SCC 574, does not deal with insurance coverage but deals with a case involving the non-possession of driving license by the driver at the time of the accident. The other judgment relied upon by the learned counsel for the claimants namely a decision of a learned Single Judge of this Court in the case of National Insurance Company Limited vs. P.Suresh reported in 2018 (2) TN MAC 499, also does not come to aid the claimants as the said judgment also does not deal with the issue which is the subject matter of this appeal.

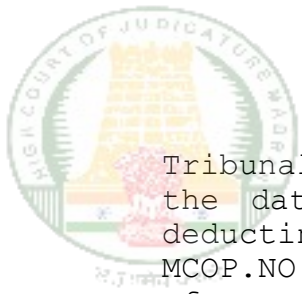
12. As rightly contended by the learned counsel for the Appellant, it is settled law as laid down by the decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Sobina Iakai and others reported in (2007) 7SCC 786 which is followed by a decision of the learned Single Judge of this Court dated 27.11.2019 passed in CMA. Nos.2319 of 2004 and 661 of 2007 that when there is no insurance coverage on the date of the accident, the Appellant cannot be made liable to compensate the claim and the Tribunal also cannot grant pay and recovery rights against the Insurance Company.

13. This Court has also perused and examined the impugned Award as well as the evidence placed by the respective parties before the Tribunal. The Appellant / Insurance Company has conclusively established before the Tribunal that on the date of the accident, i.e., on 23.09.2010, there was no insurance coverage for the subject vehicle which was involved in the accident. They have also produced the insurance policy Ex.B1 which reveals that the insurance coverage for the vehicle is only for the period from 28.09.2010 to 27.09.2011 i.e., the period subsequent to the date of the accident. The Tribunal under the impugned Award by total non-application of mind and without assigning any reason has mulcted the liability on the Appellant / Insurance Company who are not at all liable to compensate the claim, since there was no insurance coverage on the date of the accident.

Conclusion:

14. For the foregoing reasons, the impugned Award dated 10.08.2012, passed in MCOP.No.1140 of 2012 on the file of the Motor Accident Claims Tribunal, 5th Additional District and Sessions Judge, Coimbatore against the Appellant is hereby set aside and this appeal is allowed. However, it is made clear that the Award passed against the 4th and 5th respondents, the driver and owner of the subject vehicle by the Tribunal is confirmed.

15. In the result, the fourth and fifth respondents who are the driver and owner of the subject vehicle are jointly and severally directed to deposit the compensation awarded by the



Tribunal along with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and cost, after deducting the amount already deposited if any to the credit of MCOP.NO.1140 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount along with accrued interest lying to the credit of MCOP.No.1140 of 2012 to the bank accounts of the claimants/respondents 1 to 3 through RTGS within a period of two weeks thereafter. No costs.

-s/d-
Assistant Registrar (CS-IV)

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Sub-Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
5th Additional District and Sessions Judge, Coimbatore.

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

C.M.A.No.274 of 2013

CA(CO)
SP(12/08/2021)