IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NOS.1909, 1910 AND 1911 OF 2018
AND
C.M.P.NOS.14682, 14684 & 14686 OF 2018

C.M.A.No.1909 of 2018
The Manager
M/s.SBI, General Insurance Company Limited,
2nd Floor, Door No.104,
Race Course Road, Coimbatore-641 018
.. Appellant/2nd Respondent

Vs.

1.Manikandabalan .. 1st Respondent/Claimant

2.P.Murugesan .. 2nd Respondent/1st Respondent

C.M.A.No.1910 of 2018
The Manager
M/s.SBI, General Insurance Company Limited,’
2nd Floor, Door No.104,
Race Course Road, Coimbatore-641 018
.. Appellant/2nd Respondent

Vs.

1.P.Saravanan .. 1st Respondent/Claimant

2.P.Murugesan ... 2nd Respondent/1st Respondent

C.M.A.No.1911 of 2018

The Manager
M/s.SBI, General Insurance Company Limited,’
2nd Floor, Door No.104,
Race Course Road, Coimbatore-641 018
.. Appellant/2nd Respondent

Vs.

1.Shanmugam ... 1st Respondent/Claimant

2.P.Murugesan ... 2nd Respondents/1st Respondents

Common Prayer:

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.11.2017 made in M.C.O.P.Nos.2169, 2171 & 2172 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Salem.

(In all appeals)

For Appellant : Mrs.C.Harini
for M/s.M.B.Gopalan Associates

For R1 : Mr.N.Vijaya Baskar
for M/s.Law Vision

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed by the Insurance Company challenging the award dated 01.11.2017 made in M.C.O.P.Nos.2169, 2171 & 2172 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Salem.

2.All the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellant/Insurance Company is 2nd respondent in M.C.O.P.Nos.2169, 2171 & 2172 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem. The 1st respondent in all the appeals filed the said claim petitions claiming a sum of Rs.50,00,000/-, Rs.1,00,00,000/- and Rs.1,00,00,000/- respectively, as compensation for the injuries sustained by them in the accident that took place on 11.07.2013.

4.According to the 1st respondent in all the appeals, on 11.07.2013 at about 3.00 p.m while the 1st respondent in C.M.A.No.1909 of 2018 was driving the car and the 1st respondent in C.M.A.Nos.1910 & 1911 of 2018 were travelling as passengers in the said car bearing Registration No.TN-30-BC-006 on Salem-Coimbatore, National Highway Road, near RTO Office, Sankari, the driver of the lorry belonging to the 2nd respondent in all the appeals, came from the opposite direction in a rash and negligent manner and turned the lorry in a wrong manner by taking U-turn and dashed against the car and caused the accident. In the accident, the 1st respondent in all the appeals sustained multiple injuries all over the body. Immediately after the accident, the 1st respondent in all the appeals were taken to Vinayaka Mission Hospital, Salem for first aid treatment and thereafter, they were shifted to Miot International Hospital, Chennai. Hence, they filed the above said claim petitions claiming a sum of Rs.50,00,000/-, Rs.1,00,00,000/- and Rs.1,00,00,000/- respectively as compensation against the 2nd respondent and appellant-Insurance Company in all the appeals, being owner and insurer of the lorry respectively.

5.The 2nd respondent in all the appeals, being the owner of the lorry, filed separate counter statements and denied various averments made by the 1st respondents in all the appeals. According to the 2nd respondent in all the appeals, the 1st respondent in C.M.A.No.1909 of 2018, the driver of the car only drove the same in a rash and negligent manner and dashed against the lorry and invited the accident. At the time of accident, lorry of the 2nd respondent was insured with the appellant-Insurance Company and hence the 2nd respondent is not liable to pay any compensation to the 1st respondent in all the appeals. The 1st respondents have to prove their age, avocation, income, nature of injuries and period of treatment taken by producing valid documents. In any event, the quantum of compensation claimed by the 1st respondents are highly excessive and prayed for dismissal of the claim petitions.

6. The appellant-Insurance Company in all the appeals, being insurer of the lorry belonging to the 2nd respondent, filed separate counter statements and contended that the 2nd respondent/owner of the lorry availed insurance for the lorry for the period from 20.06.2013 to 19.06.2014, since the previous policy was valid till 19.06.2013. The appellant-Insurance Company collected the premium vide receipt No.534503 dated 25.06.2013. But the premium cheque dated 18.06.2013 for Rs.30,332/- issued by the owner of the vehicle, the 2nd respondent for the above mentioned policy was not cleared and the same was returned vide memo dated 28.06.2013 due to insufficient funds and the appellant-Insurance company cancelled the policy on 08.07.2013 from inception with effect from 20.06.2013 itself, due to non-realisation of premium. The cancellation of policy from inception has been communicated by the appellant-Insurance Company to the owner of the lorry, the 2nd respondent by RPAD letter dated 08.07.2013. Therefore, there was no privity of contract between the 2nd respondent and the

appellant-Insurance Company on the date of accident i.e., dated 11.07.2013. According to the appellant-Insurance Company, the accident has not occurred as alleged by the 1st respondents and the accident occurred only due to rash and negligent driving by the driver of the car/1st respondent in C.M.A.No.1909 of 2018. The 1st respondent in all the appeals have to prove their age, avocation, income, nature of injuries and period of treatment taken by producing valid documents. In any event, the quantum of compensation claimed by the 1st respondents are highly excessive and prayed for dismissal of all the claim petitions.

7.Before the Tribunal, the 1st respondent in C.M.A.No.1909 of 2018 was examined as P.W.1, the 1st respondent in C.M.A.No.1910 of 2018 was examined as P.W.2 and the 1st respondent in C.M.A.No.1911 of 2008 was examined as P.W.3 and one David Hensenlal - Public Communication Officer of Miot Hopsital, Chennai, was examined as P.W.4 and 28 documents were marked as Exs.P.1 to P.28. On behalf of the 2nd respondent and appellant-Insurance company in all the appeals, one P.Jayadev, who is the Assistant Manager of Insurance Company was examined as R.W.1 and 8 documents were marked as Exs.R1 to R.8. Six Court documents were marked as Exs.C1 to C.6 and four witnesses were examined as Exs.W1 to W4.

8.The Tribunal considering the pleadings, oral and documentary evidence held that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent in all the appeals and directed the appellant- Insurance Company, being the insurer of the lorry to pay a sum of Rs.16,74,082/-, Rs. 6,94,213/- and Rs.8,03,372/- respectively as compensation to the 1st respondent at the first instnace and recover the same from the 2nd respondent in all the appeals.

9.Against the common award dated 01.11.2017 made in M.C.O.P.Nos.2169, 2171 & 2172 of 2013, the appellant-Insurance Company, has come out with the present appeals.

10.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in holding that appellant-Insurance Company is liable to pay compensation, when there was no valid contract of the insurance and cheque issued by the 2nd respondent towards premium was dishonoured and when there was failure of consideration and the contract of insurance is void-ab-initio as laid down in Regulation 4 of IRDA (Payment of Premium) Regulations. The Tribunal failed to appreciate the evidence let in by the appellant to prove the intimation of cancellation of policy sent through registered post, with acknowledgement to the 2nd respondent prior to the date of accident and the same has been served on him. The Tribunal erred in disbeliving the postal acknowledgement on the ground that the appellant failed to prove the signature of the 2nd respondent on the postal acknowledgement. The Tribunal failed to appreciate that registered post was sent to the address of the 2nd respondent and the same has been received in his residence as per the signature found in the postal acknowledgment. The finding of the Tribunal that Ex.R6-the postal acknowledgment is created for the purpose of the present case, is perverse. The learned counsel appearing for the appellant further contended that the 2nd respondent, after the accident, insured the vehicle with the appellant for the period from 21.07.2013 to 20.07.2019 and the same was marked as Ex.R7 and prayed for setting aside the award of the Tribunal.

11.Per contra, the learned counsel appearing for the 1st respondents in all the appeals contended that the 1st respondents are third parties to the contract between the appellant and the 2nd respondent. The 2nd respondent has paid premium on 25.06.2013 and the appellant had issued policy. Subsequently, when the cheque issued by the 2nd respondent was dishonoured, the appellant cancelled the policy. The same was not binding on the 1st respondent and 1st respondent cannot be put on loss. The appellant has not proved that intimation with regard to cancellation of policy was received by the 2nd respondent before the date of accident. In Ex.R6-postal acknowledgement card, there is no signature of the 2nd respondent and the Tribunal has rightly rejected Ex.R6 and prayed for dismissal of all the appeals.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent in all the appeals and perused the material available on record.

13.It is admitted that the 2nd respondent issued cheque towards premium for the policy on 25.06.2013. According to the appellant, the said cheque was returned by the Bank on 28.06.2013 for want of funds and receipt of the memo from the Bank with return cheque was marked as Ex.R.4. The appellant cancelled the policy and intimated the same to the 2nd respondent vide RPAD letter dated 08.07.2013. The appellant filed and marked copy of the intimation letter as Ex.R5 and postal acknowledgement as Ex.R6. It is undisputed that intimation letter-Ex.R5 was sent to the 2nd respondent to his residential address and the same was received at his residence. The verification of the Ex.R6-postal acknowledgement card shows that intimation letter dated 08.07.2013-Ex.R5 was sent to residential address of the 2nd respondent and the same was received at his residence before 11.07.2013, the date of accident. The Tribunal erroneously rejected Ex.R6-the postal acknowledgement on the ground that signature in Ex.R6 is different from the signature in Ex.R3. The reasoning of the Tribunal for rejecting Ex.R6 is erroneous. The Tribunal failed to consider that Ex.R6 was sent to the residential address of 2nd respondent and the same was received at his residence. The service on any of the adult member at the residence of the 2nd respondent is valid. In addition to that, the 2nd respondent has taken fresh policy from 21.07.2013 to 20.07.2014 and the said policy was marked as Ex.R7. The Honourable Apex Court has held that the cancellation of policy should be intimated to the owner of the vehicle prior to the date of accident. In such case, the Insurance Company is not liable to pay any compensation. In the present case, Ex.R5-the copy of the intimation letter and Ex.R6-postal acknowledgement card coupled with Ex.R7-fresh policy proves that the 2nd respondent received the intimation about cancellation of policy prior to the date of accident.

14.For the above reason, all the three appeals are allowed and the common award of the Tribunal directing the appellant to pay compensation to the 1st respondents at the first instance and recover the same from the 2nd respondent is set aside. The 2nd respondent in all the appeals is directed to deposit the award amount determined by the Tribunal, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.Nos.2169, 2171 & 2172 of 2013. On such deposit, the 1st respondent in all the appeals are permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the amount, if any, lying in the deposit to the credit of M.C.O.P.Nos.2169, 2171 & 2172 of 2013, if the award amount has already been deposited. It is also made clear that if the 1st respondents in all the appeals have already withdrawn the award amount, the appellant/Insurance Company is not entitled to recover the same from the 1st respondents, but they can recover from the 2nd respondent. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsn

To

1. The Special Subordinate Judge No.I,
   Motor Accidents Claims Tribunal,
   Salem.

2. The Section Officer,
   V.R.Section,
   High Court, Chennai.

+1cc to M/s.Law Vision, Advocate, S.R.No.16026
+3cc to M/s.M.B.Gopalan Associates, Advocate, S.R.No.16917

C.M.A. Nos. 1909 to 1911 of 2019
and C.M.P.Nos. 14682, 14684 & 14686 of 2018

VBA(CO)
CS/27/01/2021