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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2441 of 2014
and
M.P.No.1 of 2014

Bajaj Allianz General Insurance Co. Ltd.
No.25/26, Prince Towers
4th floor, College Road
Nungabakkam, Chennai-6. ... Appellant/2nd Respondent

Vs.

1.M.Rajan ... 1st Respondent/Claimant
2.Habeeb Khan ... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.07.2013 made in M.C.O.P.No.2341 of 2009 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.S.Arunkumar

For R1 : Mr.Arundattan
for Mr.C.Munusamy

For R2 : Mr.G.Munuraj

J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 03.07.2013 made in M.C.O.P.No.2341 of 2009 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.2341 of 2009 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai. The 1st respondent filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.06.2009.

3.According to the $1^{st}$ respondent, on the date of accident i.e., on 06.06.2009 at about 10.30 hours, while he was riding in his motorcycle on Appu Muthali Street to Bazaar Road, the driver of the car belonging to the $2^{nd}$ respondent drove the car, which was coming from Kutchery road, in a rash and negligent manner, dashed against the $1^{st}$ respondent and caused the accident. In the accident, the $1^{st}$ respondent sustained grievous injuries all over the body. Therefore, the $1^{st}$ respondent has filed the above claim petition claiming compensation against the $2^{nd}$ respondent and the appellant/Insurance Company.

4.The $2^{nd}$ respondent, owner of the car filed counter statement denying the averments made by the $1^{st}$ respondent and stated that the car was insured with the appellant/Insurance Company and the policy was in force at the time of accident. The driver of the car took the car without permission of the $2^{nd}$ respondent and at the time of accident, the driver was not in duty. Merely because the driver of the car pleaded guilty in the Criminal Court, it is not correct to state that the accident has occurred due to rash and negligent driving by the driver of the car. The driver of the car was not responsible for the accident. The $1^{st}$ respondent has driven the motorcycle under the influence of alcohol. In any event, the compensation claimed by the $1^{st}$ respondent is excessive and prayed for dismissal of the claim petition.

5.The appellant/Insurance Company insurer of the car filed counter statement denying the averments made by the $1^{st}$ respondent and stated that the cheque dated 26.03.2009 issued towards payment of premium was dishonoured on 30.03.2009 even before the date of accident and hence, the policy with regard to the car stands cancelled void ab initio. The policy was not in force at the time of accident. The cancellation of policy was intimated to the 2nd respondent vide letter dated 08.04.2009 and the same was acknowledged by him on 20.04.2009 and also the letter of intimation on cancellation of policy was sent to the concerned R.T.O. on 08.04.2009 even before the date of accident. The $2^{nd}$ respondent alone is liable as the cancellation was duly informed to him even before the date of accident. The $1^{st}$ respondent was not cautious while he was riding the motorcycle and therefore, he is responsible for the accident. In any event, the compensation claimed by the $1^{st}$ respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the $1^{st}$ respondent examined himself as P.W.1, Dr.J.R.R.Thiagarajan was examined as P.W.2 and six documents were marked as Exs.P1 to P6. The appellant/Insurance Company examined one Mr.C.J.Charles Vijayachandran as R.W.1 and marked five documents as Exs.R1 to R5.

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7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 2nd respondent and directed the appellant/Insurance Company being insurer of the said car to pay a sum of Rs.4,45,100/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent, owner of the car as the policy was cancelled on the date of accident.

8.Against the said award dated 03.07.2013 made in M.C.O.P.No.2341 of 2009, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the cheque dated 26.03.2009 issued by the 2nd respondent towards payment of premium for the policy period from 28.03.2009 to 27.03.2010 was dishonoured on 30.03.2009. The appellant by the registered letter dated 08.04.2009 sent on 18.04.2009 informed the 2nd respondent about the dishonour of cheque and policy was void ab initio. The 2nd respondent received the said letter on 20.04.2009. The appellant has also informed R.T.O. about the cancellation of policy and concerned R.T.O. has also received the letter sent by the appellant on 20.04.2009. The appellant marked the returned cheque with notice and acknowledgment as Exs.R2 to R4. Even after receipt of the notice, the 2nd respondent did not pay the premium amount as called upon by the appellant and there was no policy in force on the date of accident i.e. on 06.06.2009. Therefore, the appellant is not liable to pay any compensation to the 1st respondent. The Tribunal failed to consider the evidence both oral and documentary let in by the appellant properly and erroneously ordered pay and recovery. The Tribunal failed to note that the 2nd respondent contested the claim petition through Advocate, he did not deny the return of cheque and cancellation of policy. When the appellant is not liable to pay compensation, the Tribunal erroneously ordered pay and recovery and prayed for setting aside the award of the Tribunal.

9(i). The learned counsel in support of his contentions, relied on the following judgments:

(i) 2012 (1) TNMAC 481 (SC) (United India Insurance Company Ltd. vs. Laxmamma and others);

> "19. In our view, the legal position is this : 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

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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 dishonored 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.

20. Having regard to the above legal position, insofar as facts of the present case are concerned, the owner of the bus obtained policy of insurance from the insurer for the period April 16, 2004 to April 15, 2005 for which premium was paid through cheque on April 14, 2004. The accident occurred on May 11, 2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated May 13, 2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on May 21, 2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy award of compensation passed in favour of the claimants."

(ii) 2014(2) TNMAC 733 (SC) (National Insurance Co. Ltd. vs. Balkar Ram and others);

"3.The Appellant/Insurance Company assailed the award passed by the Tribunal essentially on the ground that the cover note for the policy of insurance was issued on 7.04.2000 for which a cheque was submitted by the owner. However, the cheque was dishonoured by the bank on 17.04.2000. Subsequently, the vehicle which was insured with the appellant-insurance company met with an accident on 19.04.2000. The appellant-insurance company, therefore, contended that as the policy of insurance could not be held to be a valid document in view of the fact that the cheque towards the policy had been dishonoured even before the accident had taken place, the insurance

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company was not liable to indemnify the claimants by paying the amount which fell into its share as per the Tribunal's award and it is the owner which is liable to pay the entire amount of compensation to the respondents/claimants.

4.However, we compliment Ms. Kiran Suri, learned counsel for the appellant for cutting short the controversy by fairly pointing out the ratio of the judgment (2012) 5 SCC 234 titled United India Insurance Co. Ltd. Vs. Laxmamma & others wherein it has been held that the insurance company is liable to satisfy the award if the intimation regarding the dishonour of the cheque and cancellation of policy is communicated to the policy-holder after the date of the accident. Thus, the defence of the insurance company that the policy of insurance was not valid since the cheque had been dishonoured prior to the accident would not exonerate them from making the payment of compensation. In this matter, admittedly the accident had taken place on 19.04.2000 and the cheque although had been dishonoured prior to the accident on 17.04.2000, the intimation to the policy-holder had been given by the insurance company on 26.04.2000, in view of which the insurance company cannot be allowed to contend that the policy-holder was not holding a valid policy of insurance in regard to the vehicle which met with an accident. Admittedly, the policy-holder had already issued another cheque substituting the cheque which had earlier been dishonoured.”

(iii). 2016 (2) TNMAC 520 (SC) (New India Assurance Co. Ltd. vs. Tara Devi and others);

“6.Learned Counsel appearing for the Appellant/Insurance Company submits that on the date of the alleged incident, the vehicle in question did not have the valid Insurance Policy. To buttress his argument, the Learned Counsel brings to our notice the date of the Policy lapsed, the date of intimation of dishonour of the Cheque and the Cancellation Letter written to the insured/Owner. But this aspect of the matter has not been taken note either by the Tribunal or the High Court while passing the impugned Judgment(s) and Order(s).

7. We have carefully perused the documents furnished by learned counsel for the Appellant-

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Insurance Company. From these documents, it is clear that the alleged accident took place on 09.05.2001 and on the said date the vehicle in question did not have the valid Insurance Policy. In that view of the matter, we are of the opinion that, the Tribunal as well as the High Court are not justified in granting compensation to the respondents/claimants.

8.In view of the above, we allow this Appeal and set aside the Orders passed by the Tribunal and confirmed by the High Court. The Appellant-Insurance Company is not liable to pay any Compensation as far as the claim towards the alleged accident is concerned. The Compensation amount deposited, if any, shall be refunded to the Appellant-Insurance Company forthwith. No costs"

10.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent is third party victim in the accident and he should not be penalised for the mistake committed by the 2nd respondent and on technicalities. The Tribunal considering the judgments of the Hon'ble Apex Court and this Court, ordered pay and recovery. There is no error in the award of the Tribunal and prayed for dismissal of the appeal. In support of his contentions, the learned counsel relied on the following judgments:

(i) 2012 (5) SCC 234 (United India Insurance Company Ltd. vs. Laxmamma and others);

"20. Having regard to the above legal position, insofar as facts of the present case are concerned, the owner of the bus obtained policy of insurance from the insurer for the period April 16, 2004 to April 15, 2005 for which premium was paid through cheque on April 14, 2004. The accident occurred on May 11, 2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated May 13, 2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on May 21, 2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy award of compensation passed in favour of the claimants."

(ii). 2019 (4) ALL MI 392 (SBI Insurance Company vs. Madhubala and others);

"12. Thus, when on account of bouncing of

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> cheque issued towards premium of policy of insurance, the owner of the offending vehicle committed breach of his promise, the insurer of the offending vehicle is not bound to indemnify the owner of the offending vehicle. In the circumstances, as insurer was liable to pay compensation to the third party, it has right to recover the paid amount from owner of the offending vehicle."

11.The learned counsel appearing for the 2nd respondent contended that the appellant/Insurance Company did not cancel the policy on dishonour of cheque. On the other hand, in the letters sent by the appellant, insured was advised to return the cover note and policy immediately. In view of the same, the policy was in force on the date of accident and hence, the appellant is liable to pay compensation and prayed for setting aside the award of the Tribunal ordering pay and recovery and direction to the appellant to pay compensation.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and the 2nd respondent and perused the entire materials on record.

13.From the materials on record, it is seen that the 2nd respondent issued cheque dated 26.03.2009 towards premium for policy for the period from 28.03.2009 to 27.03.2010, the said cheque was dishonourned on presentation and the drawee bank returned the cheque on 30.03.2009. The appellant, by the letter dated 08.04.2009 sent on 18.04.2009 to the 2nd respondent, informed the 2nd respondent that the policy was void ab initio and called upon the 2nd respondent to pay cash, if he wants the policy to be issued by the appellant to be valid from the date of payment. The appellant has also called upon the 2nd respondent to produce the vehicle for inspection at the time of payment of premium by cash. From a reading of the letter dated 08.04.2009 in its entirety, it is clear that the 2nd respondent was informed that policy was no longer in force and it is void ab initio. When the appellant called upon the 2nd respondent to pay the premium amount in cash and take a fresh policy from the date of payment, the policy issued earlier was already cancelled and was void ab initio. The 2nd respondent contested the claim petition, he has not denied the case of the appellant and has not denied the dishonour of cheque and receipt of letter dated 08.04.2009. The appellant proved the issue of letter dated 08.04.2009 by marking a copy of the said letter and postal acknowledgment to the 2nd respondent, which was received by him on 20.04.2009 and receipt for sending notice to the concerned R.T.O. on 18.04.2009.

14.In the three judgments referred to above relied on by the learned counsel appearing for the appellant, the Hon'ble Apex Court in all the three judgments held that when the cheque was dishonoured and cancellation of policy was intimated to the owner before the date of accident, the Insurance Company is not liable to pay compensation. If the accident occurs before the date of cancellation, then the Insurance Company is liable to pay compensation. In the present case, the policy was cancelled by the letter dated 08.04.2009 which was received by the 2nd respondent on 20.04.2009 and sent notice to the R.T.O. on 18.04.2009 before the date of accident i.e., on 06.06.2009. In view of the judgments referred to above, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent. When the Insurance Company is not liable to pay compensation, the order of pay and recovery is erroneous, the same is liable to be set aside and it is hereby set aside. The 2nd respondent, owner of the car alone is liable to pay compensation to the 1st respondent. In view of the above, the judgments relied on by the learned counsel appearing for the 1st respondent does not advance the case of the 1st respondent.

15.In the result, this Civil Miscellaneous Appeal is allowed and the sum of Rs.4,45,100/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The 2nd respondent, owner of the car, is directed to deposit the amount awarded 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. On such deposit, the 1st respondent is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the award amount lying in the deposit to the credit of M.C.O.P.No.2341 of 2009 on the file of Motor Accident Claims Tribunal, V Small Causes Court, Chennai, if award amount has already been deposited by them. If the appellant/Insurance Company has deposited the entire award amount and the 1st respondent has already withdrawn the entire award amount, it is not open to the appellant/Insurance Company to recover the same from the 1st respondent and can recover the same from the 2nd respondent, owner of the vehicle. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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To

The V Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

Copy To

The Section Officer
VR Section, High Court
Madras.

+1cc to Mr.C.Munusamy, Advocate, S.R.No.42870
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.43102

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