BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.10.2020

Pronounced on : 09.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.M.A(MD) Nos.952 to 954 of 2015

C.M.A(MD).No.952 of 2015

M/s.Bajaj Allianz General Insurance Co.Ltd.,
Represented by its General Manager,
No.25/26, Prince Tower 4th Floor,
College Road,
Nungambakkam,
Chennai. ...Appellant/2nd Respondent

Vs.

1.Rajapal ...1st Respondent/1st petitioner
2.Arputhaseeli ...2nd Respondent/2nd Petitioner
3.The General Manager,
M/s.Melathar Mining Co., Pvt., Ltd.,
New No.39, 2nd Floor, ABC Trade Centre,
Anna Salai,
Chennai. ...3rd Respondent/1st Respondent

4.Arul Stanislas ... 4th Respondent/3rd Respondent

5.Minor Ans Sonia Marry
Minor represented by father and
Guardian 4th respondent herein... 5th Respondent/4th Respondent

C.M.A(MD).No.953 of 2015

M/s.Bajaj Allianz General Insurance Co.Ltd.,
Represented by its Divisional Manager,
No.25/26, Prince Tower 4th Floor,
College Road,
Nungambakkam,
Chennai. ...Appellant/2nd Respondent

Vs.

1.Arul Stanislas ... 1st Respondent/Claimant

2.M/s.Melathar Mining Co., Pvt., Ltd.,
No.39, 2nd Floor, ABC Trade Centre,
Anna Salai,
Chennai. ... 2nd Respondent/1st Respondent

C.M.A(MD).No.954 of 2015

M/s.Bajaj Allianz General Insurance Co.Ltd.,
Represented by its Divisional Manager,
No.25/26, Prince Tower 4th Floor,
College Road,
Nungambakkam,
Chennai. ...Appellant/2nd Respondent

Vs.

1.Arul Stanislas ... 1st Respondent/Claimant

2.Minor. Anes Sonia Mary
Minor represented by father and
Guardian 1th respondent herein ... 2nd Respondent/2nd Petitioner

3.M/s.Melathar Mining Co., Pvt., Ltd.,
No.39, 2nd Floor, ABC Trade Centre,
Anna Salai, Chennai. ... 3rd Respondent/1st Respondent

COMMON PRAYER: These Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, against the Decree and Judgement of Motor Accidents Claims Tribunal Subordinate Judge of Valliyur dated 29.01.2015 in M.C.O.P.No.223 of 2010 and M.C.O.P.Nos.7 & 8 of 2011 respectively.

For Appellant : Mr.G.Maruthiah
For Respondents : Mr.K.Sudalaiyandi for R4 and R5 in CMA(MD)/952/2015 & for R1 in CMA(MD)/953 & for R1 & R2 in CMA(MD)954/2015

COMMON ORDER

These appeals are preferred against three separate claim petitions which arose out of some accident that took place on 05.06.2010 when a car bearing Registration No.TN 01 AH 8573 collided with a two wheeler bearing No.TN 72 T 2893. In the accident, the pillion rider, who is the wife of the rider of the bike died and the rider himself suffered injuries. Seeking compensation for the death of the pillion rider, her husband and children filed MCOP.No.8 of

2011. The parents of the deceased filed a separate MCOP.No.223 of 2010. Both these petitions came to be enquired jointly and the Tribunal has awarded a compensation of Rs.10,85,500/-. For arriving at this compensation the Tribunal has reckoned the avocation of the victim of the accident as a School Teacher drawing a salary of Rs.4,500/-, a fact spoken to P.W.4, the Principal of the School, the age of the victim at 30 years and adopting a multiplier of 17 after granting 50% towards future prospects of increase in income. So far as the rider of the motor cycle is concerned, he is found to have suffered 32% disability and was awarded a compensation of Rs.2,43, 992/-. It then proceeded to fasten joined and several liability both on the owner of the car and its insurance company.

2.Aggrieved by the compensation awarded, the Insurance Company of the offending car has preferred the appeal.

3. Before the tribunal, the appellant had taken up a plea that on the date of the accident, the car involved in it was not insured with it. According to it,the car was insured with for a period from 12-03-2009 to 11-03-2010. The policy fell for renewal on 12-03-2010. On 04-03-2010, the owner of the car (third respondent in CMA/952/15/first respondent in MCOP/223/2010, second respondent in CMA/953/2015/first respondent in MCOP/7/2011 & third respondent in CMA/954/2015/first respondent in MCOP/8/2011) had paid the premium though a cheque, and the appellant had renewed the policy. However, the cheque issued towards payment of premium came to be dishonoured, and promptly the appellant cancelled the policy. It has also intimated the same to all concerned Vide its communication dated 19-03-2010. And, the accident has taken place some three months thereafter, on 05-06-2010.

4.Heard both sides. It is seen that Vide Ext.R-6 and R-8, the Insurance Company had intimated both the owner of the car as well as the RTO about the cancellation of the policy, and Ext.R-7 and R-9 acknowledgement cards substantiate its due service. Therefore the insurance company cannot be fastened with any liability.

5. In ***New India Assurance Co., Ltd Vs Rula & Others*** [(2000)3 SCC 195]. Relying on its earlier decision in ***Oriental Insurance Co. Ltd., Vs Interjit Kaur***, [[(1998)1 SCC 371], the Hon'ble Supreme Court has held that where a premium is paid through cheque, and if the cheque was later dishonoured due to which the policy itself came to be dishonoured, still the insurer was liable to the third party before such cancellantion. In both ***Rula and Inderjit Kaur,*** the Court had invoked Sec.64VB of the Insurance Act, 1938, to support its conclusion. In ***National Insurance Co., Ltd., Seema Malhotra & Others*** [(2001)3 SCC 151], after relying on ***Rula and***

Interjit Kaur cases, the Hon'ble Supreme Court has held that Sec.64VB of the Insurance Act would apply to cases where premium is ordinarily payable outside India, and proceeded to hold that where the cheque is not honoured and there is no contract of insurance and consequently the insurer wouldnot be liable.

6.In ***Dedappa & Others Vs The Branch Manager, national Insurance Co., Ltd.*** [2008(2) TN MAC 138], the Hon'ble Supreme Court concurred with the view in ***Seema Malhotra case.*** The relevant portion is extracted hereunder;

> *"26.We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-a-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the Insurance Company would not be liable to satisfy the claim."*

7.What emerges now is that where a policy subsists on the date of accident, no matter that it is later cancelled for failure of consideration, the insurance company would be liable to the third parties. And, where the insurer has cancelled the policy for failure to pay the premium, such as dishonour of cheque, then the insurance compmany would not be liable provided the cancellation of policy was intimated to all concenrned.

8.The evidence on record indicate that not only was the policy issued for the offending car by the appellant was cancelled a few months ago prior to the accident, but the same had been intimated to all concerned in terms of the ratio in ***Dedappa case.*** Necessarily the appellant must be absolved of the liability to pay the compensation awarded by the tribunal.

9.In the result, these appeals are allowed and the entire liability has to be fastened on the owner of the Car bearing No: TN 01 AH 8573, (third respondent in CMA/952/15/first respondent in MCOP/223/2010, second respondent in CMA/953/2015/first respondent in MCOP/7/2011 & third respondent in CMA/954/2015/first respondent in MCOP/8/2011), and the award passed in M.C.O.P.No.223 of 2010 and M.C.O.P.Nos.7 & 8 of 2011, on the file of Motor Accident Claims Tribunal, Subordinate Judge, Valliyur is modified to this extent. The appellant is directed to deposit the entire Award amount with all accrued interest within a period of eight(8) weeks from the date of receipt of a copy of this order and is now entitled to recover the same from the owner of the Car bearing No:

TN 01 AH 8573. Upon which, the claimants would be entitled to withdraw the entire amount forthwith. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Tsg-2/rmk

To,

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Valliyur.

Copy to
The V.R.Section,
Madurai Bench of Madras High Court,
Madurai(2 copies).

+3 CC to Mr.G.MURUTHIAH, Advocate SR.No.25039
+1 CC to Mr.K.SUDALAIYANDI, Advocate SR.No. 24782

C.M.A(MD) Nos.952 to 954 of 2015
09.12.2020

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