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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.02.2021

PRONOUNCED ON : 26.02.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.1371 OF 2007
AND
M.P.NO.1 OF 2007

(THROUGH VIDEO CONFERENCING)

The New India Assurance Company Limited,
Branch Office,
Kumaran Shopping Complex,
Kumaran Road, Tirupur.
.. Appellant/Respondent 3

.vs.

1.Chenniappan … Respondent 1/Petitioner

2.Ganesan … Respondent 2/Respondent 1

3.Rangasamy … Respondent 3/Respondent 2
(2nd respondent is given up as he is not a necessary party)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree made in M.C.O.P.No.250 of 2004 dated 22.11.2006, on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.III, Dharapuram, Erode District (Additional District and Sessions Judge).

For Appellant : Mr.R.Sivakumar

For R1 : Mr.T.Seshian

For R3 : No Appearance
Served

For R2 : Not necessary Party
hence given up

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J U D G M E N T

The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 22.11.2006 passed by the Motor Accident Claims Tribunal, Dharapuram (Fast Track Court No.3, Dharapuram, Erode District / Additional District and Sessions Judge) in M.A.C.T.O.P.No.250 of 2004.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.78,100/- as compensation together with interest 7.5% per annum from the date of claim petition till the date of deposit to the 1st respondent/claimant who met with an accident on 18.02.2001 when he was riding a Moped bearing registration number T.B.P.6390.

3. According to the 1st respondent / claimant, when he was riding the aforesaid Moped, a Motorcycle bearing registration number T.C.G.1120 driven by its driver in a rash and negligent came from the opposite direction and dashed against the Moped driven by the 1st respondent/claimant, as a result of which, the he sustained the following injuries:-

i. Fracture injuries in the right plam and right leg,

ii. Severe injuries all over the body.

4. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.78,100/-. Aggrieved by the same, the appellant Insurance Company has been filed the present Civil Miscellaneous Appeal.

5. In this appeal, the appellant – Insurance Company has questioned not only the quantum of compensation awarded by the Tribunal, but also the liability fastened on the appellant Insurance Company on the ground that on the date of the accident on 18.02.2001 there was no Policy in existence for insured vehicle. He submits that Ex.R1 – policy was valid only for only a period between 20.02.2001 and 19.02.2002 i.e. after the accident on 18.02.2001.

6. It is submitted that Ex.P7 marked by the 1st respondent / claimant was a fabricated document and cannot be basis on which, the liability can be fastened on the appellant.

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Ex.P7 Cover Note dated 16.02.2001 is merely an acknowledgment of payment of premium for the Policy and certainly, it cannot give the date of Policy unless the Policy was generated on the same date.

7. I have considered the arguments advanced by the learned counsel for the appellant - Insurance Company and the learned counsel for the 1st respondent /claimant. I have perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

8. Defending the impugned Judgment and Decree, the learned counsel for the 2nd respondent submits that it is for the appellant Insurance Company to explain how Ex.R7 Cover Note came to be issued on 15.02.2001 as if reflects the policy number. In any event, the 1st respondent/claimant has no control over the cover note/Receipt and therefore, it is between the appellant and the owner of the insured vehicle and Ex.R1. Therefore, no prejudice can be caused to the 1st respondent / claimant who is not party such mistakes.

9. The learned counsel for the appellant - Insurance Company submits that the issue is covered by the decision of the Hon'ble Supreme Court in Kantilal Gordhandas Lalakiya versus Ramniklal Laxmichan Khimasiya and others, 2008 SCC Online Gujarat 342 wherein it was held reads as under:

> 12.Apex Court has also considered similar aspect in case of Dedappa v.The Branch Manager, National Insurance Co. Ltd., [2008 (61) AIC 10 (SC) : (2008) 2 SCC 595 : AIR 2008 SC 767.] Apex Court has considered that on the date on which accident occurred, there was a policy of insurance in respect of vehicle in question, third party would have claim against insurance company and owner of vehicle would have to be indemnified in respect of claim of that third party. It was also held therein that subsequent cancellation of policy of insurance on the ground of non payment of premium would not affect rights already accrued in favour of third party, meaning thereby, that on the date on which accident occurred, policy was in existence. Relevant observations made by Apex Court in paras 20 and 21 are reproduced as under:

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"20. The ratio of the said decision was, however, noticed by this Court in New India Assurance Co. Ltd.v. Rula. [2000 (39) ALR 227 (SC) : (2000) 3 SCC 195.] It was held that ordinarily a liability under the contract of insurance would arise only on payment of premium, if such payment was made a condition precedent for taking effect of the insurance policy but such a condition which is intended for the benefit of the insurer can be waived by it.

It was opined,

If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party".

The dicta laid down therein clarifies that if on the date of accident the policy subsists, then only the third party would be entitled to avail the benefit thereof.

21. Almost an identical question again came up for consideration before this Court in National Insurance Co. Ltd. v. Seema Malhotra, [(2001) 3 SCC 151.] a Division Bench noticed both the aforementioned decisions and analysed the same in the light of section 64-VB of the 1938 Act. It was held:

"17. In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid

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18. Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation.

19. Under section 25 of the Contract Act an agreement made without consideration is void. Section 65 of the Contract Act says that when a contract becomes void any person who has received any advantage under such contract is bound to restore it to the person from whom he received it. So, even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured, the insurer is entitled to get the money back.

20. However, if the insured makes up the premium even after the cheque was dishonoured but before the date of accident it would be a different case as payment of consideration can be treated as paid in the order in which the nature of transaction required it. As such an event did not happen in this case, the Insurance Company is legally justified in refusing to pay the amount claimed by the respondents".

16.This Court in Oriental Insurance Co. Ltd.v. Inderjeet Kaur, [(1998) 1 SCC 371.] held that once a certificate of insurance is issued, the insurance company would not be absolved of its obligations to third parties.

10. The learned counsel for the appellant in reply submits that both the Ex.P.7 and Ex.R.1 are the only copy of the insurance policy and not cover note. It is therefore submitted that the Tribunal ought not to have directed the appellant-Insurance company to pay the compensation to the 1st respondent/ claimant herein for the accident which took place on 18.02.2001. It is specifically submits that the insurance policy covered risk

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for the period between 20.02.2001 and 19.02.2002. He submitted that there is no basis to fasten liability even if the premium for the policy was paid by the owner of the vehicle viz., 3 respondent herein on 15.02.2001.

11. Ex.P.7 is a cover note/original receipt dated 15.02.2001, wherein particulars of the amount received from the 3rd respondent insured has been given.

12. In Ex.R1- Copy of Insurance Policy indicates the proposal for the policy was 22.02.1970. The policy appears have been continuously renewed from 1970. It indicates that the vehicle was insured with the appellant-Insurance company from 22.02.1970 and that the previous policy was in force at the time of accident Ex.R1- copy of the policy was merely renewal of the policy, which came to be renewed with effect from 18.02.2001. Therefore, I find no merits in the present appeal filed by the appellant - Insurance Company. Accordingly, it is liable to be dismissed.

13. It is represented by the learned counsel for the appellant- Insurance Company that the entire award amount has already been deposited before the Tribunal.

14. The 1st respondent-claimant is permitted to withdraw the same together with interest as directed by the Tribunal, by filing suitable application before the Tribunal.

15. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No cost. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS V)

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Sub Assistant Registrar

kkd

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To

The Additional District and Sessions Judge,
The Motor Accidents Claims Tribunal,
Fast Track Court No.III,
Dharapuram, Erode District.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.11703
+1cc to M/s.R.Meenal, Advocate, S.R.No.11849

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and M.P.No.1 of 2007

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