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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2021

CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA.No.2749 of 2015
and M.P.No.1 of 2015

The Branch Manager,
M/s.The Oriental Insurance Company Limited,
CBO 2, 73/B1, Salai Road,
Lakshmi Complex,
Thilla Nagar,
Tiruchirapalli – 620 018. ...Appellant/ 2nd Respondent

Vs.

1.Raja Chidambaram (Died) ... 1st Respondent/Petitioner

2.S.Selvaraj ... 2nd Respondent/1st Respondent
3.Mathuam, W/o.Raja Chidambaram
4.Sumitha, W/o.Sridhar

(RR3 & 4 brought on record as LRs of the deceased R1 viz., Raja Chidambaram vide Court order dated 10.02.2021, made in CMP Nos.11582, 11584 and 11585 of 2020 in CMA.No.2749 of 2015)

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.74 of 2014, dated 26.03.2015, on the file of the Motor Accidents Claims Tribunal, Cheif Judicial Magistrate Court, Perambalur.

For Appellant	: Ms.Harini for Mr.Vijayaraghavan
For R1	: Died
For R2	: No appearance
For R3 & R4	: Mr.T.Gopinath

JUDGMENT
(The case has been heard through video conference)

The Insurance Company is the appellant herein.

2.The appellant/Insurance Company has filed this Civil Miscellaneous Appeal, to the challenge the award passed in the

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MCOP.No.74 of 2014 on the file of the Motor Accident Claims Tribunal, Perambalur, on the ground that on the date of accident there is no valid and subsisting policy and hence, the order of pay and recover passed by the Tribunal is bad in law and seeks exoneration.

3.The learned counsel for the appellant herein/Insurance Company would contend that on the date of the accident, viz., 19.09.2013, there is no valid policy and hence, the Insurance Company is not liable.

4.The learned counsel for the respondent/claimant would contend that the claim petitioner died and his legal representatives were brought on record and they could not recover the award amount from the owner of the vehicle.

5.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the offending vehicle are not under challenge.

6.Before the Tribunal, during the course of trial, on behalf of the petitioner, PW1 and PW2 were examined and marked Exs.P1 to P14 and on the side of the respondents RW1 has been examined and marked Exs.R1 to R9.

7.Heard the learned counsels and perused the materials placed on record.

8.The date of the accident as per the pleadings and the evidence are: on 19.09.2013, initially, the second respondent herein/owner of the vehicle has insured the vehicle with the appellant herein/Insurance Company and for the same, the Insurance Company had issued the Policy, which is marked as Ex.R1. Thereafter, the premium has been paid through cheque and on deposit of cheque, the same was returned as bounced and the same was marked as Ex.R2. The order of intimation sent by the bank to the second respondent herein is marked as Ex.R3, since, the cheque for the premium amount issued by the second respondent herein was returned for insufficience of funds, the Insurance Company exercised its power, has cancelled the second respondent's Policy under Ex.R4. The intimation regarding the cancellation of Ex.R1/Policy was sent by the Insurance Company through registered post to the second respondent herein which was marked as Ex.R5 and the same was returned as refused as could be seen from Ex.R6/acknowledgment card. As per the General Clauses Act, the refusal amounts to service. As per Ex.R7, this Court finds that an intimation regarding cancellation of Ex.R1/Policy has been duly intimated to RTO Office at Cuddalore, and the same is marked as Ex.R8. Further, it appears that the second respondent herein/owner of the

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vehicle has paid another premium amount on 26.09.2013 and accordingly, another policy was issued and pursuant to the payment of premium i.e., on 26.09.2013, Ex.R9/new policy was issued covering the period from 26.09.2013 to 25.09.2014.

9.Admittedly, the date of the accident is on 19.09.2013 and hence, the finding rendered by the Tribunal that on the date of the accident, the appellant herein/Insurance company has intimated about the cancellation insurance policy to the owner of the vehicle and as such, the appellant/Insurance Company does not have any valid policy coverage and existing insurance policy does not cover for the accident happened on 19.09.2013.

10.In view of the decision reported in 2012 5 SCC 234 United India Insurance Company Limited Vs. Lazmamma and others, wherein, the Hon'ble Supreme Court has held that when a policy has been cancelled for dis-honour of the cheque, it has to be duly intimated and on intimation, the Insurance Company is exonerated from any liability.

11.From the documentary evidence of Exs.R4, R5 & R6 coupled with the oral evidence of RW1, this Court finds that for the dis-honour of the cheque issued for premium for policy, have been proved and the cancellation of the policy/Ex.R1 is valid in law and intimation thereto has been duly sent to the party. Hence, the Insurance Company is not liable to pay any amount and the Trial Court went wrong in ordering for pay and recovery of the matter of this nature. This Court is not concurring with the view taken by the Tribunal and hence, the finding of the Tribunal that Insurance Company is liable to pay compensation hereby stands vacated and Insurance Company is exonerated from any liability.

12.In the result, this Civil Miscellaneous Appeal stands partly allowed to the limited extent as indicated above and the award passed by the Tribunal in MCOP.No.74 of 2014, dated 26.03.2014 stands modified to the limited extent that Insurance Company is not liable and it is open to the legal heirs of the deceased/claim petitioner to recover the award amount from the owner of the vehicle. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Dua

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To

1.The Motor Accident Claims Tribunal,
Cheif Judicial Magistrate Court,
Perambalur.

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

+1cc to Mr.T.Gopinath, Advocate, S.R.No.17271

CMA.No.2749 of 2015

AD(CO)
GN(29/10/2021)