IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING JUDGMENT	DATE OF PRONOUNCING JUDGMENT
05.03.2021	27.04.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.2567 OF 2016
AND
C.M.P.NO.18426 OF 2016

The National Insurance Company Limited,
Third Party Cells HUB,
No.751, Anna Salai,
Chennai - 600 002.
... Appellant/2nd Respondent

.Vs.

1. B.Naresh Kumar ... 1st Respondent/Claimant

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

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.6686 of 2013 on the file of the Motor Accident Claims Tribunal (VI Judge, Court of Small Causes) at Chennai dated 13.07.2015.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Ms.A.Subadra
For M/s.Ralph V. Manohar
For R1

R2 - No Appearance

J U D G M E N T

The appellant is the Insurance Company, which is challenging the order passed by the Tribunal on the point of liability and quantum.

2. The first respondent herein is the claimant, said to have travelled in the two wheeler and met with an accident. In the petition, he stated that one Mr.Kumaran is the owner of the vehicle. However, during the trial, he claimed that he is the owner of the vehicle and the said P.Kumaran is the previous owner of the vehicle and produced Ex.P6 delivery note, as if the delivery note has been given by the second respondent namely P.Kumaran in his favour and hence he claimed that he is the owner of the vehicle. The tribunal accepted the same and granted the award and the same is now challenged by the Insurance Company.

3. The point for consideration before this Court is, when the claimant is the owner of the vehicle has met with an accident, whether he is entitled for any compensation. As per Ex.R1 it is an Act only policy. The vehicle involved is a two wheeler. Whether the second respondent herein Kumaran is the owner of the vehicle or the claimant Naresh Kumar is the owner of the vehicle is another point determined in this appeal.

4. Mr.Krishnamoorthy, learned counsel for the appellant/ Insurance Company would contend that as per the pleadings, one Mr.Kumaran is the owner of the vehicle, as stated in the respective columns in the claim petition. That being the case, the vehicle is covered under the Act only policy and hence any person driving the two wheeler is not covered under the policy. It appears that Ex.P6 was marked by P.W.1, the claimant, alleging that it is a delivery note.

5. The learned counsel for the appellant stated that mutation of name has not taken place in the Registration Certificate and hence, he cannot be recognized as the owner of the vehicle. No intimation seems to have been given to the Insurance Company regarding change of ownership.

6. The learned counsel, on the point of quantum, has submitted that, even assuming and without admitting, the claim of the petitioner/the owner of the vehicle is entitled for only one lakh under the personal accident coverage in respect of specified injuries contained therein. The nature of injuries as reflected in the personal permanent disability certificate does not fall under the injuries mentioned in the policy and the appeal is both on the aspect of liability as well as the quantum of compensation.

7. Per contra, Ms.A.Subadra, learned counsel for R1 would submit that the first respondent herein is the claim petitioner and the second respondent herein is the previous owner and he had purchased the two wheeler from the second respondent herein under Ex.P6 delivery note dated 26.12.2010 and he has not

effected name change in the RC Book and policy of the Insurance coverage was taken on 02.03.2011 for one year. Policy coverage is provided from 02.03.2011 to 01.03.2012, date of accident is on 10.07.2011 and hence would submit that in view of the judgment rendered in (2014) 2 TN MAC 321 SC, the person who is having effective control over the vehicle is the owner of the vehicle and as such the claim petitioner by virtue of Ex.P6 is the owner. Since he has paid the policy coverage under the special accident policy, he is entitled to Rs.1,00,000/-.

8. Per contra, by way of reply, the learned counsel for the appellant/Insurance Company would contend that only in respect of scheduled injuries he is entitled to and not in respect of injuries as spoken by P.W.2 Doctor.

9. This Court has carefully considered the rival submissions and also perused the records. As per Section 2(30) of MV Act, defines who is the owner of the vehicle. Admittedly, as per the RTO Office records, the Registration Certificate stands in the name of second respondent herein and not in the name of the claimant. The first respondent-claimant has filed Ex.P6 delivery note and claims that he is the owner of the vehicle. However, has not effected mutation of the name in the RTO Office.

10. Admittedly, the vehicle is a two wheeler. Ex.P6 says it is the delivery note dated 26.02.2010, policy is taken for the period from 02.03.2011 to 01.03.2012. On perusal of the pleadings, I find that the claim petitioner had categorically pleaded that the second respondent herein P.Kumaran is the owner of the vehicle and also shown the appellant as Insurance Company before the Tribunal. In the meanwhile, it appears, during the time of trial, he has taken a different stand that he is the owner of the vehicle. However, the first respondent had not effected mutation of name in the registered certificate before the RTO Office nor intimated the Insurance Company regarding the change of the ownership.

11. Admittedly, Ex.P5 which was pressed into service is the delivery note. None in connection with the delivery note was examined before the Tribunal and the evidence of PW.1 runs contra to his own pleadings and hence, this Court finds that it is only a after thought. The claim petitioner having realised the fact that he being the borrower of the vehicle is not entitled to claim compensation under Section 163A of the MV Act, as chosen to change the stand and created Ex.P6 delivery note and hence I find that the genuinenesses of Ex.P6 is at stake.

12. Yet another point is that the evidence of P.W.1 as to the ownership runs contrary to his pleadings and taking into

consideration the definition of owner under the MV Act coupled with the inconsistency in the pleadings and the evidence of the P.W.1 as to the ownership, I have no hesitation in my mind to hold that Ex.P6 is not reliable to place reliance as to the ownership. Accordingly, it is held that the 2nd respondent herein is only the owner of the vehicle. Ex.P1 FIR says that the claimant is only a borrower of the vehicle.

13. The Hon'ble Supreme Court in Ramkhiladi and another v. United India Insurance Co. Ltd., has held that borrower of a vehicle cannot maintain claim petition as he stepped in the shoes of the owner of the vehicle and as such being a tortfeasor, the Insurance Company is not liable to pay compensation under the policy except for the additional premium if any paid. In the instant case, Ex.R1 is the Insurance Policy and the additional premium is paid only for the owner of the vehicle. This Court has held that the second respondent herein is the owner of the vehicle and the claimant is not the owner of the vehicle. Therefore, the additional premium paid will not extend coverage to the injured herein who is the borrower of the vehicle.

14. In view of the above cited decision in Ramkhiladi's case and the above finding that the second respondent herein is the owner of the vehicle and claim petitioner being the borrower of the vehicle, and the additional premium paid is only for the owner of the vehicle to have the personal accident coverage, I find that the tribunal has committed an error in extending the personal accident coverage given to the owner of the vehicle to the borrower of the vehicle and awarded the claim and hence, the same is liable to be vacated. Accordingly, the finding of the tribunal that the claim petitioner/first respondent herein is the owner of the vehicle and he is entitled to compensation under personal accident coverage hereby stands vacated. Thus, the CMA is allowed and the Insurance Company is not liable to pay compensation to the claim petitioner. No costs. Consequently connected miscellaneous petition is closed.

15. The amount deposited by the appellant/Insurance Company, if any, in the credit of M.C.O.P.No.6686 of 2013 on the file of the Motor Accident Claims Tribunal (VI Court of Small Causes, Chennai), is permitted to be withdrawn by the appellant/ Insurance Company, by filing an appropriate application.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To

The VI Judge,
Court of Small Causes,
The Motor Accidents Claims Tribunal,
Chennai.

Copy To:-

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

C.M.A.NO.2567 OF 2016

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PBS/12/11/2021
PBS/22/11/2021