IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.2010 OF 2017
AND
CMP NO.10822 OF 2017

The Manager,
M/s.Bharti Axa General Insurance Company Ltd.,
2nd Floor, Metro Plaza,
No.162, Anna Salai,
Chennai 600 002.

...Appellant/2nd Respondent

Vs

1.Vijayalakshmi

2.Minor Chandru
(Rep. by his mother and natural guardian Vijayalakshmi)

...Respondents 1 & 2/Petitioners 1 & 2

3.K.Haribabu

...3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.08.2016 made in M.C.O.P.No.70 of 2015 on the file of the Motor Accidents Claims Tribunal-I, Special District Judge, Tiruvallur (previously numbered as MCOP 145 of 2012 on the file of Principal District Court, Tiruvallur).

For Appellant : M/s.K.Poomalai

For Respondents : Mr.K.T.S.Sivakumar
for R1 and R2
R3 – Served - NA

## J U D G M E N T

The appeal is filed by the Insurance Company being aggrieved by the order passed by the Tribunal, wherein the compensation awarded to the accident victim is directed to be paid by the Insurance Company/the appellant herein with permission to recover the same from the owner of the vehicle.

2.On 17.11.2011, at Periyapalayam Road, Pakkam Village, a tipper lorry bearing Registration No.TN20 BE 5760 caused the death of Jayaraman, aged 38 years old, who was a Pump Operator earning Rs.5,000/- per month.

3.The Insurance Company took defense that the premium paid for the insurance by way of cheque returned for insufficiency of fund. Therefore, on the date of accident, there was no insurance to indemnify the vehicle owner.

4.The Tribunal on considering the evidence let in by the respondent particularly the respondents R.W.1 and R.W.2 and examining the intimation letter marked as Ex.R4, held that the cancellation of insurance not been duly intimated to the vehicle owner and the RTO. Hence, the Insurance Company is liable to pay the compensation to the claimants and recover the same from the vehicle owner.

5.In the appeal, it is contended that the Courts have held that the cheque given towards premium if bounced for insufficient of fund, the Insurance coverage gets cancelled and the Insurance Company is not liable to indemnify the owner. Since there is no contract between the vehicle owner and the Insurance Company, agreement without consideration is void. The Tribunal erred by ordering pay and recovery, without following the dictum of the Apex Court laid in New India Insurance Co. Ltd. vs. Rula.

6.Heard the submission of the learned counsel for the appellant and the respondents. Perused the records.

7.The accident occurred on 17.11.2011 near the house of the deceased at Pakkam village, Periyapalayam road. The tipper lorry bearing Registration No.TN20 BE 5760 was insured under the appellant Company on receipt of the cheque for the premium amount. The period of coverage mentioned in the policy cover from 25.02.2011 to 24.02.2012. Policy Note Number FCV/I0515034/31/02/C13113 was issued subject to realisation of the cheque issued towards premium. The cheque given towards insurance premium was presented for collection and the same was returned unpaid on 03.03.2011 with reason stating “insufficient fund”.

8.The case of the appellant is that the vehicle owner and the concern RTO were informed about the return and cancellation of the Insurance Policy. For the said purpose, the Insurance Company has examined R.W.2. In the decisions of the Supreme Court reported in National Insurance Co. Ltd. Vs Abhaysing Pratapsing Waghela & Others, (2008 AIR SCW 6178), New India Assurance Co. Ltd., vs Rula and Others, (2000 ACJ 630) and Oriental Insurance Co. Ltd. Vs Inderjit Karur and Others, (1998 ACJ 123), the Supreme Court has categorically held that subsequent cancellation of insurance policy on the ground of dishonour would not affect the rights of a third party and that mere return of cheque given towards premium will not cancel the insurance coverage, unless and until the owner of the vehicle as well as the concerned RTO office is duly informed about the cancellation of the Insurance. It is the duty of the Insurance Company which received the cheque for the premium to inform the owner of the vehicle as well as the RTO about the cancellation of the insurance coverage. If the insurer fail to inform then the third party victim cannot be deprived of compensation.

9. In this case also, though it is contended by the Insurance Company that the cancellation of insurance policy was intimated to the owner of the vehicle as well as RTO concerned much prior to the accident, R.W.2 during his cross-examination admit that they have no proof for such communication. Therefore, the trial court in view of the fact that there is no proof to show that the vehicle owner as well as RTO were informed about the cancellation of the insurance, held that the Insurance Company is liable to pay the claimants and thereafter, to recover the same from the vehicle owner, who has given cheque towards insurance premium. This Court, after going through the records, the evidence and the impugned award find that there is no error in the award of the Tribunal. Hence, the Civil Miscellaneous Appeal is dismissed. The award of the Tribunal is

confirmed. No order as to costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Audit)

// True Copy //

Sub Assistant Registrar

vri

To

The Special District Judge,
Motor Accidents Claims Tribunal-I,
Tiruvallur.

Copy To

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

+1cc to Mr.P.S.Amalraj, Advocate, S.R.No.17107

CMA NO.2010 of 2017

GJ(CO)
RLP(09/11/2021)