IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23.02.2021

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.2090 of 2017

M/s.ICICI Lombard General Insurance Company Limited,
Chottabhai Centre,
No.140, 2nd & 3rd Floor,
Nungambakkam High Road,
Chennai – 600 034. ... Appellant/2nd Respondent

/versus/

1. S.Iyanar, ..1st respondent/Petitioner

2. R.Sathish Kumar,
(2nd respondent ex parte in Lower Court) ... 2nd Respondent/
1st Respondent

Prayer:
Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.1954 of 2007, dated 20.12.2011 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court No.1, Cuddalore.

For Appellant : Mrs.R.Sreevidhya

For R1 : Mr.R.Sreedhar

For R2 : No appearance

J U D G M E N T

This Appeal is filed by the Insurance Company being aggrieved by the award passed by the Tribunal fixing liability on the Insurance Company to pay the accident victim, though on the date of accident, there was no valid insurance coverage for the offending vehicle.

2. The shorts point involved in this case is that, on 12.07.2007, when the claimant met with the accident near L.P.Puram E.B Office along Chennai to Panruti Salai, the offending lorry bearing registration No.TN-20-AY-2979 had no valid insurance coverage, as per the contention of the Insurance Company.

3. The Tribunal, while considering the claim petition filed by the accident victim had relied upon Ex.P.5, the copy of the Insurance Policy to hold that the offending vehicle had valid insurance coverage for the period from 16.06.2007 to 15.06.2008. The tribunal has failed to note that cheque given for payment of the premium amount of Rs.10,194/- on presentation bounce back. Due to dishonouring of the cheque, the Insurance Company has cancelled the insurance coverage and intimated the same to the vehicle owner.

4. As held by the Hon'ble Supreme Court in United India Insurance Company Limited -vs- Laxmamma and others reported in (2012) 5 SCC 234, if the premium not paid or the cheque gets bounced later, the tentative coverage provided by the Insurance Company can be cancelled, after due notice to the vehicle owner and the R.T.O Office concern.

5. In this case, from the documents, this Court finds that Ex.R.1 is the cheque dated 16.06.2007 given for premium. On presentation, it bounced back on 22.06.2007. Immediately the owner of the vehicle has been intimated but the said intimation letter was returned 'unserved.' However, on the part of the Insurance Company with due diligence, cancellation has been notified to the authorities as well as the insurer soon after the non-realisation of the premium amount. The accident occurred on 12.07.2007 much after the cancellation of the insurance. Therefore, Ex.P.5 Policy which was issued tentatively on receipt of the cheque towards the premium amount cannot be held as valid insurance coverage, even after the cancellation.

6. The Tribunal has erred on this score and directed the Insurance Company to pay the compensation and indemnify the insurer, who in fact has not paid the premium amount. Therefore, to that extent, the award of the tribunal bound to be interfered. As a result, the Appeal filed by the Insurance Company is Allowed, to the extend of exonerating them from indemnifying the owner of the offending vehicle, who on the date of accident had not covered his vehicle with proper insurance.

7. The Leaned Counsel for the claimant/1st respondent states that the compensation amount deposited by the Insurance

Company already been withdrawn by the claimant. If it is so, the Insurance Company is at liberty to recover the money from the vehicle owner and if any money still lying in the deposit of M.C.O.P. account, the Insurance Company shall withdrawn on filing proper application. Accordingly, the Civil Miscellaneous Appeal is Allowed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

bsm

To:-
1.The Additional Sub Judge No.1,
The Motor Accidents Claims Tribunal,
Additional Subordinate Court No.1, Cuddalore.

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.11645

C.M.A.No.2090 of 2017

BR(CO)
CB(15/09/2021)