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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 16.12.2020

DATE ON WHICH PRONOUNCED : 11.01.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

C.M.A(MD) No.1375 of 2010
and
MP(MD)No.3 of 2010

The Regional Manager
United India Insurance Company Limited,
Madurai.
... Appellant/2nd Respondent

vs.

1.Durairaj ... 1st Respondent/ Petitioner

2.Nagaraj ... 2nd Respondent / 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 11.08.2009 passed in M.C.O.P.No.731 of 2005 on the file of the Motor Accident Claims Tribunal cum Additional Sub Court, Thanjavur.

For Appellant : Mr.C.Jawahar Ravindran

For R1 : No Appearance

For R2 : Mr.S.Sathesh Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree, dated 11.08.2009, passed in M.C.O.P.No.731 of 2005 on the file of the Motor Accident Claims Tribunal cum Additional Sub Court, Thanjavur.

2.The case of the claimant before the Tribunal is that on 14.01.2003, at about 07.00 a.m., the petitioner, his brother-in-law and his brother were riding a bullock-cart loaded with sugarcane from Sadayarkoil to Thanjavur. When they were nearing the place of occurrence, Mahendra Van bearing Registration No.TN-

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59-B-5544, was driven by its driver in a rash and negligent manner behind them and hit the bullock-cart. As a result of which, they fell down and the petitioner sustained multiple injuries all over the body. He was taken to Government Medical College Hospital, Thanjavur, and took treatment as inpatient from 14.01.2003 to 22.01.2003 and from 25.02.2003 to 01.03.2003. Again, he was admitted from 06.03.2003 to 07.03.2003. After he was taking treatment as outpatient in the Primary Health Centre, Vandaiyariruppu. Because of the accidental injuries, he could not do the work as before. He was earning a sum of Rs.200/- to Rs.300/- per day by doing agriculture work. Claiming compensation amount of Rs.4,00,000/- (Rupees Four Lakhs Only), he approached the Tribunal.

3.The case of the appellant before the Tribunal is that apart from the conventional denials, it was submitted that the accident took place only due to the rashness, on the part of the bullock cart and suddenly the bullock cart, turned towards right side and thus invited the accident.

4.Regarding the coverage, it was submitted that the offending vehicle was insured from 21.09.2002 to 20.09.2003. The certificate was issued on 07.10.2002. But, the same was cancelled since the cheque issued for the premium amount was dis-honoured. So, they were not liable to pay compensation.

5.Before the Tribunal, on the side of the petitioner, two witnesses were examined and eleven documents marked. On the side of the respondents, one witness was examined and seven documents marked.

6.At the conclusion of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent's vehicle driver and since policy was in force and the Insurance Company was directed to pay the award amount of Rs.53,000/- with interest and costs. Challenging the same, this appeal has been preferred.

7.Since the quantum is not disputed and found to be just and reasonable on the basis of the medical records produced, no argument was advanced by the appellant. So, the quantum is confirmed.

8.Regarding the negligent aspects also, the argument was advanced, on the side of the appellant that there are different version on the side of the claimant with regard to the manner of the accident. The petitioner, while he was admitted in the hospital, has given an information that he fell down from the bullock-cart and sustained injuries. So, relying upon this, it was

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the argument, on the side of the appellant that this is not a motor accident. But, P.W.1, has clearly stated that when they were not riding bullock-cart, Van which came behind them, hit them, as a result of which, they fell down. The First Information Report was also registered, on the basis of the information given by the petitioner and there was no delay with regard to the lodging of the complaint. The complaint was registered, on the basis of the statement given by him, when he was admitted in Thanjavur Medical College Hospital, wherein, he also has stated the very same thing. So, simply because there is a note that the petitioner has sustained injuries due to the fall from the bullock-cart, the very offence cannot be doubted. So, the findings of the Tribunal requires no interference and accordingly, it is sustained.

9.The next point for consideration is coverage. R.W.1, was the official attached to the appellant Company. He would say that in the policy, one Rajendran is shown as the owner. The cheque issued for the premium amount was returned on 20.09.2002 and so, it was cancelled and notice was issued to the Rajendran on 07.10.2002. But, later, the Rajendran did not come forward to pay the premium and made a fresh Insurance Policy. So, according to him, notice was issued to the Rajendran to produce relevant documents and also the first respondent, who is stated to be the owner of the offending vehicle. The first respondent received the notice. But, did not send any reply and produced the document. Notice sent to the said Rajendran was not unserved. Ex.R.2 is the notice issued by the Insurance Company to the said Rajendran and the first respondent. Ex.R.3 is the acknowledgment card of the first respondent. Ex.P.4 is the unserved notice to the said Rajendran. Returned notice dated 30.06.2009, is marked as Ex.R.5. So, it is seen that all these correspondence took place between the insurer, insured and the owner of the offending vehicle. The claimant may not be aware all these happenings since the accident took place on 14.01.2003 and correspondence took place much earlier to that date namely, 07.10.2002. So, the point that arise for consideration is ***whether on the date of the accident, a valid coverage was in force in respect of the offending vehicle*** ? If the Insurance Company is capable of proving the cancellation, then it cannot be fastened with liability. Even though, the claimant is a third party to the transaction, the Tribunal, on the basis of the policy certificate, came to the conclusion that since the policy was issued, the Insurance Company is liable to pay the amount. The correctness of this point is called and questioned in this appeal.

10.Ex.R.1 shows that the cheque was issued by one Rajendran towards premium amount in favour of the appellant Company, dated 20.09.2002. It was presented to the Vaysa Bank Ltd., Madurai and it was returned on 23.09.2002 due to 'insufficient funds'. The written memo discloses these facts. The certificate also shows

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that the cheque was returned on 23.09.2002, due to 'insufficient funds'. So, subsequent to that on 07.10.2002, a notice was issued to the drawer of the cheque namely, Rajendran intimating the dis-honour of the cheque. The cancellation notice was also issued to the Regional Transport Office, Madurai and copy was also marked on the very same day i.e., 07.10.2002. It was also intimated that the insured did not surrender the policy bearing No.091500. Ex.R.2 is the notice to the first respondent and one Rajendran. On 06.01.2009, after verifying of this position intimating that already the policy was cancelled and directing them to produce the policy of Insurance, if any, for the relevant period and Registration Certificate etc., It was received by the first respondent through Ex.R.3 as mentioned earlier.

11.So, from the facts narrated above, it is clearly established that even though the Policy Certificate was issued on the basis of the cheque issued by one Rajendran, the same was cancelled due to the dishonour of the cheque much before the date of accident. Which was duly, intimated to the first respondent, who is the owner of the vehicle. So, when that being so, the findings of the Tribunal that since the Policy Certificate was also issued, the Insurance Company is liable is without any proper evidence. As mentioned earlier, after the cancellation of the Insurance Policy, the Insurer has not returned or surrendered the Policy Certificate to the Insurance Company as mentioned earlier. So, this cannot be taken advantage by any one of the parties to the contract.

12.The appellant has relied upon the judgment of this Court reported in **National Insurance Company Vs Selvamani and others 2004 (2) TN MAC DB 534**, wherein, similar situation arose. In that case also, the policy was cancelled much before the date of accident. Here also the same position. So, the Hon'ble Supreme Court in its judgment in **Deddappa and Others Vs National Insurance Company 2008 ACG 581 (SC)**, has pointed out that even though the Tribunals are dealing with the beneficial legislations, benefit cannot be extended beyond what is mentioned in the Act. As mentioned earlier, the entire transaction that took place between the insurer, insured and the drawer of the cheque. The benefit cannot be extended to them on the ground that policy was cancelled much before the date of the accident. But, however, in that case, the Hon'ble Supreme Court by exercising the extraordinary jurisdiction under Article 142 of the Constitution of India, directed the Insurance Company to pay the amount and recover the same from the insured, considering the social status of the petitioner in that case. No such jurisdiction is available either to the Tribunal or to this Court to pass such an order. So, the appeal is liable to be allowed.

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13.In the result, the appeal is allowed and the award imposing liability on the Insurance Company towards the claim of the claimant is set aside. Award is passed against the owner of the vehicle. The 2nd respondent herein is directed to deposit the entire award amount with interest at 7.5% and cost within two months from the date of receipt of this order copy. On such deposit being made, the same may be withdrawn immediately. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Additional Sub Judge,
Motor Accident Claims Tribunal
Thanjavur.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
C.M.A(MD) No.1375 of 2010
and
MP(MD)No.3 of 2010
11.01.2021

KM (01.02.2021) 5P 4C