BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.01.2021
CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
C.M.A(MD)No.738 of 2011
and
M.P.(MD)No.3 of 2011

National Insurance Company Limited,
represented by its Branch Manager,
Thallakulam,
Madurai. ... Appellant/Second Respondent

Vs.

1.Minor Uthirakumar
rep. by mother & natural guardian
Renganayaki ... 1st Respondent/ Petitioner

2.Jeganathan ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgement and decree made in M.C.O.P. No.28 of 2005, dated 19.07.2006, on the file of the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Ramand.

For Appellant : Mr.R.Srinivasan

For Respondent No.1 : Mr.H.Lakshmi Shankar

For Respondent No.2 : Dismissed vide court order dated 10.04.2019.

JUDGMENT

Assailing the judgment and award passed by the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Ramanathapuram, in MCOP No.28 of 2005, dated 19.07.2006, the Insurance Company has filed this appeal.

2.The first respondent as a claimant, has filed MCOP.No.28 of 2005 claiming compensation of Rs.3,00,000/- for the injuries sustained by him in the accident that has taken place on 24.05.2005.

3.It is the case of the claimant that on the fateful day, he was travelling as a pillion rider in a TVS-Max-100 moped bearing Registration No.TN 65 C 5997 from Chatrakudi to Valanadu, at that time, a mini auto bearing Registration No. TN65 D 3854, which is owned by the second respondent herein and insured with the appellant, drove it in a rash and negligent manner and hit against the two wheeler. In the accident, he sustained fracture and injuries and he was immediately taken to Pioneer Hospital in Ramanathapuram. It is his specific case that the accident had occurred only due to the negligence on the part of the driver of the Mini Auto.

4.The owner remains *ex-parte* and the claim was contested by the appellant-insurance company, stating that on the date of the accident i.e. on 24.05.2005, the vehicle was not insured and a policy was taken only from 14.05 hours on 25.05.2005 and hence, they are not liable to pay the compensation.

5.Before the Tribunal, on behalf of the claimant, two witnesses were examined and 10 documents were marked. The appellant insurance company examined one Akbar Ali, as R.W.1 and marked two documents.

6. Upon consideration of evidence, the Tribunal came to the conclusion that the accident has happened only due to the negligence of the driver of the auto and awarded a compensation of Rs.87,000/- with 7.5% interest per annum. Challenging the award, the present Civil Miscellaneous Appeal has been filed.

7.Mr.R.Srinivasan, learned counsel appearing for the appellant would argue that Ex.R.1 and the evidence of R.W.1 would show that the vehicle was insured with the appellant insurance company only from 14.05 hours on 25.05.2005 and the accident had occurred on 24.05.2005 at 12.00 hours and hence, no liability can be fastened on the insurance company.

8.Per contra, Mr.H.Lakshmi Shankar, learned counsel appearing for the first respondent placing reliance on the decisions reported in ***1988-ACJ-1119, 2000-ACJ-460*** and the order of this court passed in ***CMA No.3323 of 2011, dated 17.07.2020***, would submit that admittedly the insurer has taken the policy and also paid the premium amount through cheque on 24.05.2005 and hence, the appellant cannot be exonerated from paying the compensation in this case.

9.As stated above, the second respondent herein/ owner of the vehicle remained *ex-parte* before the Tribunal and as per order 41 Rule 14(4), notice to the second respondent is dispensed with and he is not entitled to be heard in this appeal.

10.The issue that arose for consideration is whether the appellant/insurance company is to be fastened with the liability to pay the compensation, even though the policy would commence after the accident claim.

11. It is useful to refer the decision of the Hon'ble Apex Court reported in **1998(1) LW – 14 in the case of Oriental Insurance Company Limited Vs. Sunitha Rathi and others**, wherein, it is held:-

"2.The motor accident occurred on 10th December, 1991 at 2.20 PM It was only thereafter the same day at 2.55 PM that the insurance policy and the cover note were obtained by the insured, owner of the motor vehicle involved in the accident. There is express mention in the cover note that the effective date and time of commencement of the insurance for the purpose of the Act was 10th December, 1991 at 2.55 PM. The applicability of the decision in Ram Dayal's case (supra) has to be considered on these facts. In our opinion the decision in Ram Dayal's case (supra) is distinguishable and has no application to the facts of this case. The facts of that decision show that the time of issuance of the policy was not mentioned therein and the question, therefore, was of presumption when the date alone was mentioned and not the time at which the insurance was to become effective on that date. In such a situation, it was held in Ram Dayal's case (supra) that in the absence of any specific time being mentioned, the logical inference to draw was that the insurance became effective from the previous mid-night and, therefore, for an accident, which took place on the date of the policy, the insurer became liable. There is no such difficulty in the present case in view of the clear finding based on undisputed facts that the accident occurred at 2.20 PM and the cover note was obtained only thereafter at 2.55 PM in which it was expressly mentioned that the effective date and time of commencement of the insurance for the purpose of the Act was 10.12.1991 at 2.55 PM. The reliance on Ram Dayal's case (supra) by the Tribunal and the High Court was, therefore, mis-placed, we find that in a similar situation, the same view which we have taken, was also the view in M/s. National Insurance Co. Ltd. vs. Smt. Jikubhai Nathuji Dabhi & Ors. 1996 (8) SCALE 695, wherein Ram Dayal's case (supra) was distinguished on the same basis.

3.It follows that the insurer cannot be held liable on the basis of the above policy in the present case and, therefore, the liability has to be of the owner of the vehicle. However, we find

> that the High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable in the present case. This conclusion, reached by the High Court, is clearly erroneous. The liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance. There is, thus, a basic fallacy in the conclusion reached by the High Court on this point."

12.In that case, the accident took place on 10.12.1991 at 2.20 p.m., whereas, the policy was taken on the same day at 2.55 p.m. In the policy, it has been specifically stated that the policy would come into force on 10.12.1991 at 2.55 p.m. The Tribunal and the High Court held that the insurance company is liable to pay compensation, since the policy was taken on the date of accident. The Hon'ble Apex Court held that if the time and date is specifically mentioned, it will come into force only from the date and not from the midnight of the day.

13.The same view was taken by the Hon'ble Apex Court in 1999- ACC - 439. A single judge of this Court in the judgment reported in 2004(1) CTC 401 has followed the decision of the Hon'ble Apex Court cited supra.

14.In the light of the judgment of the Hon'ble Apex Court and this Court, I am unable to agree with the decision referred by the learned counsel appearing for the first respondent which are the judgments of the High Court of Karnataka and Andrapradesh and Single Judge of this Court.

15.In the matter on hand, admittedly, the accident had taken place on 24.05.2005 at 12.00 hours, but the second respondent herein had taken the policy, which was marked as Ex.R.1, commencing from 14.05 hours on 25.05.2005, which shows on the date of accident, the vehicle was not insured with the appellant insurance company. However, the Tribunal without properly appreciating the facts and the law, has directed the Insurance Company to pay the compensation. Therefore, the order of the Tribunal is liable to be set aside.

16.In the result, the Civil Miscellaneous Appeal is allowed and the order passed by the Tribunal is set aside. It is open to the claimant to recover the award amount from the owner of the vehicle. It is represented that the entire award amount has been deposited by the insurance company. If the amount is not withdrawn by the first respondent /claimant, the Tribunal is directed to refund the amount to the appellant/Insurance Company. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /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

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Ramanathapuram.

Copy to

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

JUDGMENT MADE IN
C.M.A(MD)No.738 of 2011
18.01.2021

KM (17.02.2021) 5P 4C