BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.02.2021
CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.M.A(MD)No.35 of 2019
and
C.M.P(MD).No.465 of 2019

The Branch Manager,
New India Assurance Co.Ltd.,
Mumbai. ... Appellant/2nd Respondent

vs.

1. Kalichamy ... 1st Respondent/Petitioner
2. Johny ... 2nd Respondent /1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 01.10.2018 made in MCOP.No.1 of 2014 on the file of Motor Accident Claims Tribunal/Sub Court, Periyakulam.

For Appellant	:	Mr.J.S.Murali
For R1	:	Mr.R.Rajamohan
For R2	:	No appearance

JUDGMENT

Challenging its liability to pay compensation to the claimants, the appellant insurance company has filed this appeal.

2. The only contention made by the learned counsel for the appellant is that the cheque issued by the 2nd respondent herein/owner of the offending vehicle towards premium, was dishonoured by the bankers on 04.12.2012 and the same was intimated to the 2nd respondent and also the Regional Transport Authority and to that effect, the relevant evidences and documents viz., RW1 (Company official), Exhibits R1 (policy), R2 (cheque), R3 (Bank return memo), R4 (notice sent to owner of the vehicle and RTO by RPAD) and R5 (Fresh Policy) have been submitted before the Tribunal. But the Tribunal failed to consider the said evidence and documents in the proper perspective. The canceled policy was issued for the period from 06.12.2012 to 05.12.2013 and on 09.03.2013, the accident had occurred. Thus, he submitted that on the date of accident, the insurance policy was not in force and therefore, the appellant is not liable to pay compensation, but the Tribunal ordered pay and recovery, instead of totally exonerating the appellant. In support of his contentions, learned counsel relied on the following judgments:-

(i)New India Assurance Co.Ltd., vs. Tara Devi and others reported in 2016 (2) TN MAC 520 (SC).

(ii)National Insurance Co.Ltd., vs. Subhadraben reported in 2016 (2)TN MAC 761 (Guj)

(iii)D.Kala vs. Nalameena reported in 2015 (1) TN MAC 415.

3.Learned counsel for the 1st respondent would contend that though the insurance policy has been cancelled upon dishonour of the cheque, the claim of third party cannot be defeated for the self-created predicament of the insurer in issuing the policy without actually receiving the premium and considering the fact that the third party claimants cannot be made to suffer, the Tribunal has ordered pay and recovery, which does not require interference by this Court. In support of his contention, he relied on a judgment of this Court in *The Branch Manager vs. A.Shanthi & Ors., New India Assurance Co.Ltd.*

4.Heard the learned counsel for the parties and perused the records.

5.The only issue to be decided in this matter is when the insurance policy was actually not in force due to dishonour of cheque, whether the Tribunal is correct in ordering pay and recovery. The said issue has been answered by the Hon'ble Supreme Court in a decision reported in **2016 (2) TN MAC 520** cited by the appellant, wherein in similar circumstances, the Apex Court held that insurance policy was cancelled on account of dishonour of cheque after due intimation to the owner about the dishonour and cancellation letter sent to the insured/owner and on the date of the accident, the policy was not in force and therefore, the insurance company is not liable to pay compensation. Consequently, the Apex Court directed that the amount deposited by the insurer shall be refunded.

6.The said decision is squarely applicable to the present case. In this case also, after due intimation to the owner about the dishonour of the cheque, the insurance policy of the appellant has been cancelled, which has also been acknowledged by the 2nd respondent/owner and thereafter, the accident had occurred and on the date of accident namely, 09.03.2013, no insurance policy was in force.

7.Therefore, in view of the judgment reported in 2016 (2) TN MAC 520, the finding of the Tribunal ordering pay and recovery is set aside and the appellant is totally exonerated from its liability to pay compensation. While fixing the liability on the appellant, the learned Judge had ordered pay and recovery and therefore, the 2nd respondent/owner of the vehicle is liable to pay the compensation.

8. With the above direction, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (ADII)

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Sub Assistant Registrar(CS)

To

1)The Subordinate Judge,
Motor Accidents Claims Tribunal,
Periyakulam.

2)The Section Officer,(2C)
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate (SR-5506[F] dated 17/02/2021)

+1 CC to M/s.R.RAJAMOHAN, Advocate (SR-5482[F] dated 16/02/2021)

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MJ(CO)
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