BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 22.03.2021

DELIEVRED ON : 22.06.2021

CORAM:
THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.M.A(MD)No.655 of 2019
and
C.M.P.(MD).No.8045 of 2019

Branch Manager,
Iffco-Tokio General Insurance Company Limited,
IFFCO Bhavan, 4th Floor, No.128,
Kavibullah Road,
T.Nagar, Chennai -17. .. Appellant / 2nd respondent

Vs.

1.R.Murugasingaraj .. 1st respondent/ Petitioner

2.Amuthavalli .. 2nd respondent/ 1st respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 15.03.2019 passed in M.C.O.P.No.201 of 2013 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.

For appellant : Mr.V.Sakthivel
For 1st respondent : Mr.M.Thirunavukkarasu
For 2nd respondent :No appearance

JUDGMENT

This appeal has been filed by the appellant/Insurance Company questioning the award passed by the Tribunal in M.C.O.P.No.201 of 2013 only on the ground of liability to pay the compensation amount.

2. It is a case of injury. On 23.05.2012 at about 2.30 p.m. the first respondent / claimant, along with his wife, was ridding his two wheeler at Ayyankottai Cross Road and at that time, the second respondent's vehicle ie., Mahindra Maxi Cab, which was proceeding in front of the two wheeler, suddenly applied brake and hence, the first respondent/ claimant dashed behind the second respondent's vehicle and sustained fractures on left hip, left thigh, Patella bone on the left knee, left shoulder bone and left

hand elbow. As per Ex.X1, the disability of the first respondent/claimant was assessed as 56%. At the time of the accident, the first respondent/claimant was aged about 27 years and he was working in Indian Army and earning Rs.18,000/- p.m. The first respondent/claimant filed a claim petition claiming a sum of Rs.5 lakhs as compensation against the second respondent/owner of the vehicle and the appellant/Insurance Company. The owner of the vehicle remained *ex parte* before the Tribunal. The appellant/Insurance Company has filed counter affidavit disputing liability. The Tribunal, after considering the oral and documentary evidence, has held that only due to the negligence of the driver of the second respondent/owner of the vehicle, the accident had occurred and after applying the multiplier method and considering the claim of the first respondent/claimant, has awarded Rs.5 lakhs with interest at 7.5% as compensation. The Tribunal has further held that the same is liable to be paid by the appellant/Insurance company on behalf of the second respondent/owner of the vehicle. Aggrieved over the liability fixed by the Tribunal on the appellant/Insurance Company, the appellant/Insurance Company has come up with this appeal.

3. The learned counsel appearing for the appellant/Insurance company submitted that the second respondent/owner of the vehicle has approached this Insurance Company and taken new policy in respect of Maxi Cab vehicle on 22.05.2012 at about 20.05.24 hours and the Policy came into effect from 19.57.40 hours on 23.05.2012 to midnight on 22.05.2013. It is not a renewal of policy in this Insurance Company. The policy took by the second respondent/owner of the vehicle in the other Insurance Company came to an end on 22.05.2012. The accident stated to be occurred at 2.30 p.m. on 23.05.2012. As the coverage commences from the time and date mentioned in the Insurance policy, in this case, there was no coverage by way of insurance at the time of accident and hence, the appellant/Insurance Company is not liable to pay the compensation. Despite settled decisions of the Hon'ble Supreme Court on this aspect, the Tribunal has erroneously fastened liability on the appellant/Insurance Company. Thus, he prayed to exonerate the appellant/Insurance Company from payment of compensation to the first respondent/claimant. In support of the above submission, the learned counsel appearing for the appellant relied upon the following decisions:

(a) J.Kalaivani and others Vs. K.Sivashankar and another, reported in 2002 ACJ 613;

(b) National Insurance Company Ltd., VS. Geetha and others, reported in 2004 (1) TN MAC 174 (DB);

(c) National Insurance Company Limited Vs. N.Ponnaiyan @ Kolappan and others, reported in 2004 (1) TN MAC 63 (DB);

(d) Oriental Insurance Company Limited Vs. Vedathal and others, reported in 2013 (1) TN MAC 103 (DB);

(e) National Insurance Company Limited Vs. Vijayalakshmi and

others, reported in 2017 (1) TN MAC 168 (DB).

4. The learned counsel appearing for the first respondent/claimant submitted that the insurance policy of the 2nd respondent's vehicle was taken on 22.05.2012 but, it was come into force only from 19.57.40 hours on 23.05.2012 to midnight on 22.05.2013. The accident took place on 23.05.2012 at 02.30 p.m. The Insurance Company, without getting consent from the owner of the vehicle namely the 2nd respondent herein, on his own, mentioned in the Insurance Policy that the period of insurance is from 19.57.40 hours on 23.05.2012 and the same cannot be legally sustainable. Therefore, the insurance must be deemed to have been commenced from the time when the premium amount was received by the company. In support of the above submission, he relied upon the following decisions:

(a) Oriental Insurance Company Limited Vs. Venkataraman and others, reported in 2013 (1) TN MAC 460;

(b) Prema Vs. Sampathkumar, reported in 2019(2) TN MAC 705;

(c) Oriental Insurance Company Limited Vs. Dharam Chand and others, reported in (2010) 15 SCC 141;

5. The learned counsel appearing for the first respondent/claimant would further submit that in the counter affidavit filed by the appellant/Insurance Company, nowhere they have raised the issue relating to the period of commencement of policy and that the Insurance Company is absolved from its liability to pay the compensation to the claimant. For the first time, in the evidence, the appellant / Insurance Company has raised the above said policy issue in their proof affidavit and the same cannot be accepted. It is settled law that any amount of evidence without pleadings is inadmissible in law and therefore, the evidence of the Insurance Company cannot be taken into consideration. In support of the above submission, he replied upon a decision of the Hon'ble Apex Court in **Arulmigu Chokkanatha Swamy Kovil Trust Vs. Chandran and others**, reported in **(2017) 3 SCC 702.** He would further submit that the Tribunal has elaborately dealt with the issue relating to the period of commencement of policy from the time and date of payment itself by referring to various decisions of the Hon'ble Apex Court and our High Court, and therefore, the award of the Tribunal may not be interfered with on the aspect of liability. Thus, he prayed to dismiss this appeal.

6. Though the learned counsel appearing for the 2nd respondent herein/owner of the vehicle entered appearance through a counsel, the 2nd respondent has not shown any interest in arguing the matter and today none appeared on behalf of her.

7.Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the first respondent/claimant.

8. Admittedly, in this case, the Insurance Policy in respect of the second respondent's vehicle was taken on 22.05.2012 at about 20.05.14 hours and the coverage period mentioned in the policy is with effect from 15.57.40 hours on 23.05.2012 to mid-night on 22.05.2013. It is not a renewal of policy with this appellant. It is a new one with this appellant. The earlier insurance policy which was taken by the second respondent in respect of the said vehicle with the other Insurance Company came to an end on 22.05.2012. The accident took place at 02.30 p.m. on 23.05.2012.

9. The core issue to be decided in this case is as to whether coverage of insurance commences from the date and time of payment of premium amount or from the date and time mentioned in the Policy as coverage period.

10. The issue involved in this case no more *res integra* in view of the decision of the Division Bench of this Court in the **National Insurance Company Limited vs. Vijayalakshmi**, reported in **2017 (1) TN MAC 168 (DB)**, wherein myself was a party. In the said case, after referring to catena of decisions of the Hon'ble Apex Court as well as this Court, including some of the decisions relied on by the learned counsel appearing for both sides in this case, the Division Bench has categorically held that coverage commences from the time and date mentioned in the Insurance Policy as it is being a Special Contract.

11. Now, let us analyse the decisions relied on by the learned counsel for the first respondent/claimant, which were not brought to the notice of the Division Bench in Vijayalakshmi case, cited supra.

12. In the case of **Oriental Insurance Company Limited Vs. Dharam Chand and others**, reported in **(2010) 15 SCC 141**, the insured issued cheque for the premium amount before the accident and the Insurance Company fairly admitted that since the cheque for the premium received by the Company four hours before the accident, the insurance coverage deemed to have been commenced from that time.

13. In the case of **Prema vs. Sampathkumar**, reported in **2019(2) TN MAC 705**, the insured therein issued cheque for renewal of premium before the accident, but the cheque was dishonoured, however, a learned Single Judge of this Court has held that cancellation of the policy only entitles the insurer to proceed against the owner and recover what has been paid as per the award and that the Insurance company must satisfy the innocent third party. Thus, the facts and circumstances mentioned in the above two decisions are not applicable to this case.

14. Neither the Motor Vehicles Act nor the Insurance Act require that the Insurer assume liability the moment the premium is

tendered. I am of the view that it is because there is every possibility of getting policy by paying cash immediately after the accident without disclosing the factum of accident and on that basis, insured may shift his burden on the insurer. As the law does not mandate that the risk should be assumed on the date on which the premium is received, it is for the insurer to specify such a date and time in the Policy. The date of the issue of the policy, therefore, is not decisive as to the date of commencement. The date and time specified in the policy is the effective date of commencement.

15. In this case, admittedly, the accident had occurred earlier to the time specified in the policy. Therefore, the Insurance company cannot be mulcted with liability to pay compensation and the Insurance Company is liable to be exonerated from the payment of compensation to the first respondent / Claimant.

16. The next submission of the learned counsel for the first respondent/claimant is that for the first time in the evidence, the appellant/Insurance Company has raised the above said Policy issue in their proof affidavit. A perusal of the award of the Tribunal shows that the appellant/Insurance Company has raised the said issue by filling additional counter. Therefore, the above submission of the first respondent/claimant cannot be countenanced.

17. In the result, this Civil Miscellaneous Appeal is allowed. The award of the Tribunal in M.C.O.P.No.201 of 2013 is set aside, insofar directing the appellant/Insurance Company to pay the compensation. The second respondent/owner of the vehicle is liable to satisfy the award amount. The first respondent/claimant can take steps to recover the compensation amount from the second respondent/owner of the vehicle. The appellant/Insurance Company is entitled to withdraw the amount deposited, if any, with interest accrued thereon. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Bala

To
1.The Motor Accident Claims Tribunal /
Chief Judicial Magistrate,
Virudhunagar District
at Srivilliputhur.

Copy to
The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-19836[F] dated 22/06/2021)

+1 CC to M/s.M.THIRUNAVUKARASU, Advocate (SR-19822[F] dated 22/06/2021)

judgment made in
C.M.A(MD)No.655 of 2019

22.06.2021

CN (02.07.2021) 6P 6C