BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 01.04.2021
CORAM:
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI
C.M.A(MD)No.1251 of 2014
and
MP(MD)No.4 of 2014 and CMP(MD)No.2439 of 2021

The Divisional Manager,
Divisional Office,
The Oriental Insurance Company Limited,
Thdupuzha,
Kerala State. : Appellant/2nd Respondent

Vs.

1.Tmt.Angammal
2.Bencil Reddy : R1 and R2/Petitioners 1 and 2
3.Jiji Mathew : R3/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 18.12.2012 made in MCOP No.157 of 2010 on the file of Motor Accident Claims Tribunal (Sub Court), Palani.

For Appellants : Mr.C.Jawahar Ravindran

For R1 and R2 : Mr.D.Venkatesh

For 3rd Respondent : No appearance

J U D G M E N T

Challenge made in this appeal is to the award, dated 18.12.2012 made in MCOP No.157 of 2010 on the file of Motor Accident Claims Tribunal (Sub Court), Palani. Pending appeal, the Appellant Insurance Company filed MP(MD)No.4 of 2014 to receive the documents and to mark the documents as Exs.R1 to R6 in MCOP No.157 of 2010 on the file of the Motor Accident Claims Tribunal (Sub Court), Palani and also filed CMP(MD)No.2439 of 2021 to receive the Additional Written Statement in MCOP No.157 of 2010 on the file of the Motor Accident Claims Tribunal (Sub Court), Palani.

2.Since the matter arises out of the MCOP NO.157 of 2010, the Miscellaneous Petitions were heard along with this appeal and disposed of along with this appeal by a common order.

3.The facts of the case are that on 18.05.2010, while the deceased Krishna Reddy was riding his Hero Honda motor cycle in Palany-Udumalai main road near Thalai Kanmal, the Mahendra Van KL-36-A-5546 came in a rash and negligent manner from the opposite direction and dashed against the deceased. Due to the accident, Krishna Reddy succumbed to injuries. The legal heirs of the deceased filed a claim petition seeking compensation of Rs.10,00,000/- on the ground that the offending vehicle caused the accident.

4.The claim was opposed by the Appellant Insurance Company disputing the manner of accident and their liability to pay compensation.

5.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.4,50,000/-. Aggrieved by the award of the tribunal, the Appellant Insurance Company is before this court.

6.Heard the learned counsel appearing on either side and perused the materials available on record.

MP(MD)No.4 of 2014:-

7.The learned counsel for the petitioner/appellant Insurance Company submitted that the petitioner/appellant filed the above appeal challenging the liability fastened against the petitioner Insurance Company to pay compensation to the claimants/the respondents 1 and 2 herein and after the judgment pronounced by the tribunal, the appellant Insurance Company has requested the policy issuing office (I.e) Divisional Office, Thodupuzha to confirm the 64 VB compliance. At that time, the appellant Insurance Company came to understand from Thodupuzha office about the dishonor of premium cheque for the 3rd respondent's Van and about the cancellation of policy, vide endorsement No.442600/31/2010/11066/001, dated 21.11.2009 due to non payment of premium and in case, if the cheque was dishonored due to insufficient fund, immediately intimation about the dishonor of cheque will be given and the policy will be cancelled and in this case also, dishonor intimation was sent to the 3rd respondent/owner of the Van and policy was cancelled and the appellant Insurance Company is not aware about the above fact and the same was not put forth before the tribunal. Further, the documents like dishonored South Indian Bank cheque, bank return memo, dishonor intimation letter etc. were not produced and marked on the side of the appellant Insurance Company before the tribunal and as the appellant Insurance Company had knowledge about the dishonor of premium cheque and about the cancellation of insurance policy, it is necessary for the appellant Insurance Company to produce evidence and documents to establish the case of the appellant Insurance Company before the tribunal and prays that the petition has to be allowed.

8.On the other hand, the learned counsel appearing for the respondents 1 and 2/claimant submitted that as per Order 41 Rule 27 of the Civil Procedure Code, the petitioner/appellant Insurance Company shall not be entitled to produce additional evidence whether oral or documentary, in the Appellate Court on the grounds, that the trial court has refused to admit the evidence, which ought to have been admitted, or that the party, who seeking reception of additional evidence, establishes that even after due diligence, such evidence was not within his knowledge or could not be produced by him before the Trial court, even after the exercise of due diligence or that the appellate court requires any such documents to be produced for substantial cause. But in the present case, none of the above conditions were fulfilled and the petitioner/appellant Insurance Company having failed to make any averments regarding the payment of premium by way of cheque, subsequent dishonor of cheque and the communication of the same through letter by registered post to the owner of the vehicle in the counter filed by them before the trial court, cannot be permitted to mark those documents to prove the aspect of dishonor of cheque without any pleadings and prays that the petition may be dismissed.

9.The main contention of the petitioner/appellant Insurance Company is that the cancellation of the policy for the offending vehicle was came to their knowledge, when they sent the order copy to the Divisional Office, which is at Kerala and then to prove the above contention, they filed additional documents and hence, the above documents can be accepted.

10.But the respondents 1 and 2/claimants stated that the Divisional Office already known the cancellation of policy during the year 2009, but on behalf of the 2nd respondent counter was filed during the year 2012 and hence, the Insurance Company very well got the knowledge that the policy for the offending vehicle was cancelled and failure on the part of the Divisional Office to convey the above facts to the Branch office is fault only on the part of the Divisional Office of the Insurance Company.

11.In this case, the owner of the offending vehicle is one Jiji Mathew. The case of the petitioner/appellant Insurance Company is that the owner of the offending vehicle gave a cheque for the payment of Insurance for the offending vehicle, but the above cheque was returned for insufficient of funds and the Divisional office took steps to intimate the dishonor of cheque to the owner of the offending vehicle and the owner of the offending vehicle, after receipt of the intimation, failed to pay the premium and the policy given for the offending vehicle was subsequently cancelled and hence, at the time of accident, the offending vehicle has no insurance coverage and hence, the Insurance Company is not liable to pay the compensation.

12.In this petition, the petitioner/appellant Insurance Company stated that as they are only dealing office, they were not aware of the dishonor of cheque for the payment towards insurance of the offending vehicle. To prove that the branch office of the Insurance Company has got knowledge about the dishonor of the cheque, no document was filed on the side of the respondents 1 and 2/claimants. Hence, it reveals that the Branch Office of the Insurance Company has not aware of the dishonor of the cheque and further, the cancellation of the insurance policy. To prove the above fact, the petitioner/appellant Insurance Company has filed some documents and hence, they are necessary for proper adjudication. The reasons stated in the petition are acceptable. Accordingly, MP(MD)No.4 of 2014 is allowed and the trial court is directed to receive the additional documents to be produced on the side of the Insurance Company and marked as exhibits in MCOP No.157 of 2010 on the file of the Motor Accident Claims Tribunal (Sub Court), Palani.

CMP(MD)No.2439 of 2021

13.The petitioner stated that at the time of enquiry, they are not aware of the dishonor of cheque and further, the cancellation of cheque and only after pronouncement of the judgment by the tribunal, the Divisional Office informed about the dishonor of cheque and further the cancellation of the insurance policy and in order to state about the fact, it is necessary for them to file additional counter and prays that the additional counter has to be accepted by the tribunal.

14.It is opposed on the side of the respondents 1 and 2/claimants that the failure on the part of the Divisional Office is not a ground for the Insurance Company to file this petition to receive the additional written statement and hence, the additional counter cannot be accepted. Already, this court has allowed CMP(MD) No.4 of 2014, which was filed by the Insurance Company. Further, the petitioner/appellant Insurance Company in this petition stated that to prove the dishonor of the cheque and the cancellation of the policy, the filing of additional counter is necessary. Hence, for proper adjudication of the matter, additional counter is necessary and in order to state about the facts, filing of additional counter is necessary. The reasons stated in the petition are acceptable. Accordingly, the CMP(MD)No. 2439 of 2021 is allowed. The trial court namely the Motor Accident Claims Tribunal (Sub court), Palani is directed to receive the additional written statement to be filed on the side of the Insurance Company in MCOP No.157 of 2010.

CMA(MD)No.1251 of 2014:-

15.The learned counsel for the appellant Insurance Company submitted that the above appeal challenging the liability fastened against the Insurance Company to pay compensation to the claimants and after the judgment pronounced by the tribunal, the appellant came to understand from the Thodupuzha office about the dishonor of premium cheque of the owner of the offending vehicle and also the cancellation of the policy and hence, the relevant documents were not produced in the course of trial and hence, in order to mark those documents on the side of the appellant Insurance Company, the matter may be remitted back to the tribunal for fresh disposal.

16.The learned counsel appearing for the respondents 1 and 2/claimants that the appellant Insurance Company failed to mark certain documents even though sufficient opportunity was given by the tribunal and hence, the award of the tribunal has to be confirmed by dismissing the appeal.

17.The main contention of the appellant Insurance Company is that the cancellation of the policy for the offending vehicle was came to their knowledge when they sent the order copy to the Divisional Office which is situated at Kerala and hence, the appellant Insurance Company is to be given opportunity to mark certain documents before the tribunal and for that, the matter may be remitted back to the tribunal for fresh disposal.

18.In this case the owner of the offending vehicle is one Jiji Mathew. The case of the Appellant Insurance Company is that the owner of the offending vehicle gave a cheque for the payment of Insurance for the offending vehicle, but the above cheque was returned for insufficient of funds and the Divisional Office took steps to intimate the dishonor of cheque to the owner of the offending vehicle and the owner, after receipt of the intimation, failed to pay the premium and hence, the policy given for the offending vehicle was subsequently cancelled and hence, it is presumed that at the time of accident, the offending vehicle has no insurance coverage.

19.In view of the above facts, this court is of the considered view for proper adjudication of the matter, the matter is to be remitted back to the tribunal for fresh disposal, after marking certain documents on the side of the Insurance Company and also file additional counter to that effect.

20.In the result, the Civil Miscellaneous Appeal is allowed and the judgment and decree, dated 18.12.2012 passed in MCOP No.157 of 2010 by the Motor Accident Claims Tribunal (Sub Court), Palani, is set aside. The case is remitted back to the trial court and the trial court is directed to dispose of the case afresh, after marking additional documents and also perusing the additional written statement of the Insurance Company and on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. The Registry is directed to return the original documents filed in MP(MD)No.4 of 2014 to the learned counsel appearing for the Appellant Insurance Company so as to mark the same in connection with MCOP No.157 of 2010 before the Tribunal as exhibits, after retaining the copy of the same.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

er

To

The Motor Accidents Claims Tribunal/
The Principal Subordinate Court,
Palani.

Copy to:
1. The Record Keeper,
   V.R Section,
   Madurai Bench of Madras High Court,
   Madurai.(2c)
(To Return the original document)

2.The Record Keeper,
  E.R.Section,
  Madurai Bench of Madras High Court,
  Madurai.
(To Comply the direction)

+1 CC to M/s.D.VENKATESH, Advocate (SR-15482[F] dated 08/04/2021)

C.M.A(MD)No.1251 of 2014
and
MP(MD)No.4 of 2014
and CMP(MD)No.2439 of 2021
01.04.2021

KK(27.05.2021) 6P 6C