BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	18.03.2021
Date of Judgment	15.06.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)Nos.486 and 487 of 2015
and
MP(MD)Nos.1 and 1 of 2015

(1)CMA(MD)No.486 of 2015:-

Royal Sundaram Alliance Insurance Company Limited,
176, D-E, Tiruvandrum Road,
Tirunelveli,
Rep. by its Branch Manager : Appellant/2nd Respondent

Vs.

1.Selvam : 1st Respondent/Claimant
2.Jabas Jeba Dhimothi : 2nd Respondent/1st Respondent

3.Messrs's South India Corporation Ltd.,
Rani Meiyammai Building,
Nakkal Mandapam,
Vellamadam Post,
Kanyakumari District,
Rep. by its Branch Manager : 3rd Respondent/3rd Respondent

4.Oriental Insurance Company Ltd.,
No.41, L. Building,
4th Floor, 8 Espland,
Chennai-108. : 4th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 15.07.2014 made in MCOP No.87 of 2012 on the file of Motor Accident Claims Tribunal (Sub Court), Valliyur.

(2)CMA(MD)No.487 of 2015:-

Royal Sundaram Alliance Insurance Company Limited,
176, D-E, Tiruvandrum Road,
Tirunelveli,
Rep. by its Branch Manager : Appellant/2nd Respondent

Vs.

1.Durai : 1st Respondent/Claimant
2.Jabas Jeba Dhimothi : 2nd Respondent/1st Respondent

3.Messrs's South India Corporation Ltd.,
Rani Meiyammai Building,
Nakkal Mandapam,
Vellamadam Post,
Kanyakumari District,
Rep. by its Branch Manager : 3rd Respondent/3rd Respondent

4.Oriental Insurance Company Ltd.,
No.41, L. Building,
4th Floor, 8 Espland,
Chennai-108. : 4th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 15.07.2014 made in MCOP No.88 of 2012 on the file of Motor Accident Claims Tribunal (Sub Court), Valliyur.

For Appellant	:	Mr.M.E.Ilango(in both CMA)
For 1st Respondent	:	Mr.K.Esakki (in both CMA) (Legal Aid Counsel)
For R2 and R3	:	No appearance
For 4th Respondent	:	Mr.C.Jawahar Ravindran (in both CMA)

COMMON JUDGMENT

Challenge made in these appeals is to the common award, dated 15.07.2014 made in MCOP Nos.87 and 88 of 2012 on the file of Motor Accident Claims Tribunal (Sub Court), Valliyur.

2.The short facts of the case are that on 29.11.2011 at about 4.00 pm, the claimant in MCOP No.87 of 2012 was driving the Mahendra Maxi Vehicle TN-72-A-X-8690, while the claimant in MCOP No.88 of 2012 was a load man and when they were proceedings on Tirunelveli-Nagercoil Highways, unfortunately the Van dashed against the Lorry TN-01-B-0221. In the accident, both the claimants have sustained injuries all over the body and they were taken to Nagercoil Government Hospital and thereafter, he was taking treatment in a private hospital. The claimant in MCOP No.87 of 2012 filed a claim petition seeking compensation of Rs.3,00,000/- for the injuries sustained in the accident, whereas the claimant in MCOP No.88 of 2012 filed a claim petition seeking compensation of Rs.5,00,000/- for the injuries sustained in the accident.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Van was responsible for the accident and awarded compensation of Rs.17,350/- in respect of MCOP No.87 of 2012 and Rs.1,22,350/- in respect of

MCOP No.88 of 2012 along with interest @ 7.5% p.a and dismissed the claim petitions as against the respondents 3 and 4 therein. Aggrieved by the common award of the tribunal, the appellant Insurance Company is before this court with these appeals.

4.Heard both sides and perused the materials available on record.

5.In this case the dispute is only with regard to liability. The main contention raised on the side of the appellant Insurance Company is that at the of accident, the offending vehicle has no insurance coverage and the driver of the Van had no valid driving licence and the offending vehicle has no permit and hence, their Insurance Company is not liable to pay the compensation to the claimants.

6.But on the other hand, the learned counsel appearing for the 1st respondent/claimant argued that at the time of accident, the offending vehicle has insurance coverage and hence, the Insurance Company is liable to pay the compensation to the claimants and the tribunal has rightly awarded compensation.

7.In this case, to prove that at the time of accident, the offending vehicle has no insurance coverage, the official of the Insurance Company was examined as RW1. RW1 deposed that the owner of the vehicle issued a cheque on 01.07.2011 to the agent, but the above cheque was dishonoured and hence, from their office, notice was sent to the owner of the offending vehicle to pay the amount, but after the receipt of the notice, the the owner of the offending vehicle failed to pay the amount towards premium and then, the insurance was cancelled and hence, at the time of accident, there was no insurance coverage for the offending vehicle and hence, they are not liable to pay compensation to the claimants.

8.In this case, the coverage note was issued by the agent and the cheque was issued by the 2nd respondent/1st respondent, which were marked as Exs.R1 and R2. The memo issued by the Bank stating that the cheque was dishonoured due to the insufficient of funds and the letter sent by the Bank regarding dishonour of cheque were marked as Exs.R3 and R4. The appellant/2nd respondent Insurance Company sent a notice to the 2nd respondent/1st respondent calling upon to pay the amount for the dishonoured cheque. No document was filed by the owner of the vehicle for the premium paid after receipt of the notice. After receipt of the notice, the owner of the offending vehicle failed to pay the amount. Hence, the Insurance Company cancelled the policy.

9.It is seen from the records that the date of accident is 29.11.2011. As per Ex.R5, the appellant/2nd respondent cancelled the Insurance policy, on 13.07.2011. No document was filed on the side of the claimants to prove that there was insurance coverage on the date of the accident. Hence, it is held that on the date of the accident, there is no insurance coverage for the offending vehicle. But the tribunal wrongly came to the conclusion that at the time of accident, the offending vehicle had insurance coverage.

10.Further, on the side of the appellant/2nd respondent, it is submitted that at the time of accident, the offending vehicle had no permit and the driver of the offending vehicle had no valid licence to drive the vehicle. The competent person to speak about the permit, driving licence of the driver is the owner of the offending vehicle. But in this case, the owner of the offending vehicle did not appear. Further, no steps were taken on the side of the claimants to prove that the offending vehicle had valid permit at the time of accident and the driver of the offending vehicle had valid driving licence. Hence, it is held that the claimants failed to prove that at the time of accident, the offending vehicle had valid permit and the driver of the offending vehicle had valid driving licence.

11.It is settled law that when there is no insurance coverage for a vehicle, it amounts to violation of policy condition. Hence, it is held that the Insurance Company is not liable to pay the compensation to the claimant and only the owner of the offending vehicle is liable to pay the compensation. Therefore, it is held that it is necessary to interfere into the findings given by the tribunal.

12.In the result, both the Civil Miscellaneous Appeals are **allowed** by setting aside the findings of the Tribunal with regard to the liability of the appellant Insurance Company to pay the award. It is open to the claimants to claim the award amount, which was awarded by the Tribunal, from the owner of the offending vehicle by filing appropriate proceedings, in the manner known to law. The appellant Insurance Company is permitted to withdraw the amount already deposited, if any, before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

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Sub Assistant Registrar(CS)

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Note:- In view of the present lock down owning 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 Motor Accident Claims Tribunal/
Sub Court, Valliyur

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

+1 CC to M/s.M.E.ILANGO, Advocate (SR-19371[F] dated 16/06/2021)

+2 CC to M/s.K.ESAKKI, Advocate (SR-19442[F] dated 17/06/2021)

C.M.A(MD)Nos.486 and 487 of 2015
15.06.2021

PM(CO)
KB(31.08.2021) 5P 7C