IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No1308 of 2022
and C.M.P.No.9484 of 2022

The Claims Manager,
M/s.Cholamandalam MS General Insurance Company Limited,
Dare House, 2nd Floor,
No.2, NSC Bose Road,
Chennai – 600 001. ...Appellant

Vs.

1.Mrs.Sughi
2.Minor Jayasri,
3.Minor Cowshiga
4.Mrs.Karpagam
5.Mr.Neelakandan
6.R.Porkodi ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.130 of 2017 dated 02.09.2021, on the file of the Motor Accidents Claims Tribunal, Special District Court, Tiruvallur.

For Appellant : Mr.M.B.Gopolan Associates
for Mr.M.B.Raghavan

For R1 to R5 : Mrs.Ramya V.Rao
For R6 : Mr.V.Sivalingam

JUDGMENT

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award passed by the Tribunal granting compensation to the respondents/claimants in M.C.O.P.No.130 of 2017 on the file of the Motor Accidents Claims Tribunal, Special District Court, Tiruvallur.

2.It is the case of the respondents 1 to 5 / claimants that on 11.05.2017 at about 7 A.M., when the deceased was standing on T.H.Road near Govt. Primary

School, Puddhuchathiram, the motor cycle bearing Registration No.TN-12-C-1391 came from the Poonamellee towards Tiruvallur driven in a rash and negligent manner and hit against the deceased and caused the accident. The deceased sustained severe injuries and succumbed to the injuries on the same day. Hence, the respondent filed a petition claiming a compensation of Rs.48,75,000/- against the sixth respondent and appellant as owner and insurer of the motor cycle.

3. The sixth respondent owner of the vehicle filed a counter stating that the accident did not take place due to the rash and negligent riding of the Motor Cycle. The deceased was in an inebriated condition and crossed the road unmindful of the traffic. Hence, negligence cannot be fastened on the rider of the motor cycle and prayed for dismissal of the claim petition.

4.The appellant filed the counter stating that the appellant is not liable to pay compensation as the offending vehicle No.TN-12-C-1391 was not insured with them at the time of the accident. The Insurance Policy was issued only at 11.39 hours on 11.05.2017 and the policy period was for 11.05.2017 to

10.05.2018. The accident took place at 7:00am on 11.05.2017. The insurance was obtained only after the accident and hence, the appellant is not liable to pay compensation and prayed for dismissal of the claim petition.

5. Before the Tribunal, the respondents 1 to 5 examined two witnesses as PW1 and PW2 and marked nineteen documents Exs.P.1 to Exs.P.19. The appellant examined four witnesses as R.W.1 to R.W.4 and marked twelve documents as Exs.R.1 to Exs.R.12.

6. The Tribunal after considering the pleadings, evidence and documents on record fixed the negligence on the rider of the two wheeler and rejected the contention of the appellant as regards their liability and held that the Insurance Policy was in force at the time of accident. The Tribunal awarded a compensation of Rs.20,07,800/- (Rupees Twenty Lakhs Seven Thousand Eight Hundred only) to the respondents 1 to 5 and directed the appellant to pay the compensation to the respondents 1 to 5.

7.Aggrieved by the said award of the Tribunal, the appellant have preferred the above appeal.

8. The learned counsel for the appellant contended that the appellant is not liable to pay the compensation amount as there was no insurance at the time of the accident. The accident took place at 7.A.M. The policy issued by them, Ex.R.12 would show that the policy commenced at 11.39 hours on 11.05.2017 and therefore, the appellant is not liable to pay any compensation to the respondents 1 to 5. The learned counsel for the appellant submitted that only if no time is mentioned in the Insurance Policy, the time of commencement of Insurance Policy should be taken as 00.00 hours on the day when the Insurance Policy was issued. When the Insurance Policy mentions the time of commencement of the policy, the time becomes relevant. In this case, the accident took place before the commencement of the policy and the appellant is not liable to pay compensation to the respondents 1 to 5.

9.Mr.V.Sivalingam, learned counsel for the sixth respondent submitted that the Insurance Policy issued to the insured, Ex.P.2 and Ex.R.2 would show that no time was specified in the policy document. However, the learned counsel submitted that since they had misplaced the original policy they have filed only the Xerox copy of the Insurance Policy. This was the policy document issued to the owner of the two wheeler. The appellant had not established that the Xerox copy produced by the sixth Respondent/owner of the vehicle is fabricated. The appellant had inserted the time, at a later point of time and Ex.R.12 was the document created by the appellant to deny their liability. That apart, even as per the policy document produced by the appellant as Ex.R.12 the premium payment is said to have been made by the agent R.W.2 on 08.05.2017 and 10.05.2017. The receipt numbers are found in Ex.R.12 policy produced by the appellant. Therefore, since the payment for the policy has been made much before the accident and the receipt numbers are shown in the policy, the appellant cannot deny its liability and prayed for dismissal of the appeal.

10. Mrs.Ramya V.Rao, learned counsel appearing for the respondents 1 to 5 submitted that the appellant had not shown that Ex.P2 and Ex.R.2 filed on behalf of the respondents 1 to 5 and owner of the vehicle respectively had been fabricated. In the absence of any evidence to show that it was fabricated, the said documents cannot be rejected merely because it is a Xerox copy, in view of the explanation offered by the owner of the vehicle that the original was misplaced and prayed for dismissal of the appeal.

11.We have heard the learned counsel on either side and perused the evidence, pleadings and documents on record.

12.This is a very interesting case, where we find that there is a dispute with regard to the date and time on which the insurance policy was taken. The appellant has not been able to show that the finding with regard to negligence and the quantum of compensation is erroneous. Their only grievance is that the Tribunal fixed the liability on them when there was no valid policy at the time of the accident.

13.Therefore the only question before us is to ascertain whether the appellant or the sixth respondent is liable to pay the compensation. It is the case of the appellant that Ex.R.12 is very clear wherein, the time of commencement of policy is mentioned as 11.39 hours. The respondents 1 to 5 and the sixth respondent/owner of the vehicle have produced Ex.P.2 and Ex.R.2, the Xerox copy of the policy in which the time of commencement of policy is not mentioned. Under normal circumstances, we would have rejected the Xerox copies of the insurance policy namely Ex.P.2 and R.2. However, in this case, we find that strangely the appellant has not been able to show that these two copies are fabricated and were not generated from the system. The appellant had examined R.W.4, the Deputy Manager, working in the appellant's office. R.W.4 has not stated in his evidence that Ex.P.2 and Ex.R.2 are fabricated documents. The appellant ought to have established the said fact. In the absence of the same, there is a doubt with regard to the appellant's stand that the policy was issued on 11.05.2017 at 11.39 hours. It is case of the owner of the vehicle that Ex.R.12 was prepared by the appellant at a later stage. We cannot come to such a conclusion since the owner of the vehicle has not produced the original of Ex.P2. Had they produced the original of Ex.P.2, we could have definitely concluded that Ex.R.12 was prepared at a later point of time. However, we are not able to do so.

14. Be that as it may, we find that in Ex.R12 two receipts are shown. The receipts are dated 08.05.2017 and 10.05.2017. When we asked the learned counsel for the appellant as to how two cash receipts were shown one for Rs.2,000/- (Rupees Two Thousand only) and another for Rs.2,500/- (Two Thousand Five Hundred only) in the policy issued by them, the learned counsel submitted that this was the practise adopted by the appellant. They would receive money in cash without specifying the vehicle for which the cash was received. Thereafter they would appropriate the cash towards the vehicle sought to be insured through the agent. In our view, this practice adopted by the appellant is strange and not correct. In view of this admitted position, it is not known as to how the policy time was fixed as 11.39 hours when admittedly, they had received cash on 08.05.2017 and 10.05.2017.

15. We also note another disquieting feature in this case. The agent was examined as R.W.2. He in his evidence would admit that the Insurance Policy issued in favour of the sixth respondent shows two receipts dated 08.05.2017 and 10.05.2017. He would say that Ex.R.2 policy document was issued by the appellant company. He had handed over the same to the sixth respondent/ owner of the vehicle. Though he had made payment to the Insurance Policy on 10.05.2017, the owner of the vehicle paid premium of Rs.1,273 (Rupees One Thousand Two Hundred and Seventy Three only) to him only on 11.05.2017 at 10 A.M. From the above narration of facts, it would show that the neither the appellant nor the owner of the vehicle have come out with correct particulars. The owner of the vehicle, even according to R.W.2 has paid premium for the insurance to the broker to the agent only at 10 A.M on 11.05.2017. The insurance company also issued Ex.R.2 and P.2., as per the evidence of agent without specifying the time. They had not adduced any evidence to show that it was fabricated document. Even in their policy the two receipts dated 08.05.2017 and 10.05.2017 are mentioned as payments received towards the policy. This practice appears to

be very strange and opposed to common sense. We are convinced that there is an effort, made at all ends to claim compensation and also to deny the compensation.

16.In view of the fact that Ex.P.2 and Ex.R.2 has been confirmed by the agent R.W.2 as the one issued by the appellant and in the absence of contrary evidence by the appellant company, we are inclined to grant the benefit in favour of the owner of the vehicle. We are conscious of the fact there is a doubt with regard to the version of the owner of the vehicle/insured as to when he paid the premium. The Act being a beneficial legislation and considering the fact that the Insurance company also has committed an error by adopting a very strange method of collecting cash in bulk in advance from the agents and thereafter, issuing policy, we are of the view that, they are bound to compensate as we are inclined to give the benefit of doubt to the insured. The fact that the appellant had not been able to establish Ex.P.2 and Ex.R.2 are fabricated and the fact that their own document Ex.R.12 shows that the cash was paid on 08.05.2017 and 10.05.2017 has also weighed with us in taking above decision.

17.With the above observations, Civil Miscellaneous Appeal is dismissed, confirming the Judgment and Decree dated 02.09.2021 made in M.C.O.P.No.130 of 2017. The appellant/insurance company is directed to deposit the award amount along with interest and costs within a period of six weeks from the date of receipt of copy of this judgement after adjusting the amount already deposited, if any. On such deposit, the 1st respondent is permitted to withdraw Rs.12,04,680/-, the 4th and 5th respondents are permitted to withdraw Rs.2,00,780/- each. The share of minor respondents 2 and 3 is directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st respondent/mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest once in 3 months for the welfare of the minors. No costs. Consequently, the connected miscellaneous petition is closed.

(V.M.V., J) **(S.M., J)**

18.11.2022

Index : Yes / No
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To

1.Motor Accidents Claims Tribunal,
Special District Court, Tiruvallur.

2.The Section Officer
VR Section
High Court of Madras
Chennai – 600 104.

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SUNDER MOHAN,J.
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