BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A. NAKKIRAN

C.M.A.(MD)No.641 of 2009 and
MP(MD).No.1 of 2009

The Oriental Insurance Company Ltd.,
Salai Road,
Dindigul ... Appellant/ 2nd Respondent

Vs.

1.Manivel
2.Poongothai ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award, dated 28.11.2008 made in MCOP.No.17 of 2006, on the file of the Motor Accident Claims Tribunal Sub Court, Karur.

For Appellant : Mr. C. Karthik

For Respondent No.1 : Mr.M. Karthikeya Venkatachalapathy

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant / Insurance Company against the Award, dated 28.11.2008 made in MCOP.No.17 of 2006, on the file of the Motor Accident Claims Tribunal Sub Court, Karur.

2. The 1st respondent / claimant filed the said claim petition in MCOP.No.17 of 2006, on the file of the Motor Accident Claims Tribunal, Sub Court, Karur claiming a sum of Rs.5,00,000/- as compensation, for the injuries sustained by him.

3. The facts of the case is that on 23.05.2005, at about 10.30 am, when the petitioner was travelling as Pillion rider in the Yamaha Motor Cycle bearing Regn.No.TN 47 D 4515 at Kodaikanal Hills, Vazhaigir, Near Kombaikadu Bend, downwards to Vathalagundu, the Tata Sumo bearing Regn.No.TN 57 W 1575 owned by the second respondent and insured with the appellant, driven by its driver in a opposite direction upwards to Kodaikananl in a rash and negligent manner, dashed against the Two wheeler, as a result of which, the first respondent / claimant has sustained grievous injuries all over the body. Hence, he has made the claim petition.

4. The Tribunal, considering the pleadings, oral and documentary evidence, awarded a total sum of Rs.1,61,000/- as compensation. Aggrieved by the said Award, the appellant / Insurance Company has filed the present Civil Miscellaneous Appeal.

5. The learned counsel appearing for the appellant submitted that the cheque issued by the owner towards the payment of premium for Insurance Policy was returned by the Bank when it was presented for encashment. Hence, the Insurance policy was cancelled by the Insurance company and there is no contract between the insurer and insured. Hence, the appellant is not liable to pay compensation. He would further submit that as per Section 64VB of the Insurance Act, 1938 no insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or his guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner. He further contended that in the instant case, since the cheque issued by the owner was returned by Bank, the policy was cancelled by the Insurance Company and the same was informed to the

owner as well as the concerned Transport authority / registering authority. Hence, the appellant is not liable to pay compensation.

6. Per contra, the learned counsel appearing for the first respondent relied on the Judgment of this Court, dated 04.12.018, made in CMA.No.286 of 2009, and contended that the Insurance Company has not proved the initiation of the cancellation of policy to the insured by the producing tangible evidence. Since the insured was not informed the cancellation of the policy, the Insurance Company is liable to pay the compensation and recover the same from the owner of the vehicle. The relevant portion in the above said order reads as follows:

> *9. He also relied on the decision rendered by a full bench of the Kerala High Court in Kerala High Court in Oriental Insurance Company Limited Vs. A.B. Sivankutty and others reported in 2005(2) TNMAC (Ker.) (FB) 471, wherein it has been held that the insurer cannot disown the liability to the third party and that he must work out his remedy by recovering the award amount from the insured.*
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> *10. In the decision in United Insurance Company Limited Vs. Laxmamma and others reported in 2012 (5) Supreme Court Cases 234, relied upon by Mr.S.Partheeban, learned counsel appearing for the appellant, a Division Bench of the Honourable Supreme Court has held thus:*
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> *26. In our view the legal position is this: where the policy of insurance by an authorised insurer on receipt of*

cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident.....

27....
28. ... However, the insurer shall be at liberty to prosecute its remedy to recover the amount paid to the claimants from the insured."

He has also submitted that as per Section 149(1) of the Motor Vehicles Act, if after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163-A is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of interest on that sum by virtue of any enactment relating to interest of Judgement.

7. Heard the submissions made on either side and perused the materials on record.

8. Though the learned counsel for the appellant submitted that at the time of accident, there is no contract between the insurer and insured, it is seen from the records that the cancellation of the policy has not been properly informed to the owner of the vehicle. Considering the facts and circumstances of this case, this Court is of the view that the Insurance Company is liable to pay the compensation amount to the claimant and can recover the same from the owner of the vehicle.

9. Accordingly, the Award passed by the Tribunal is modified to the effect that the Insurance Company is directed to pay the compensation amount at the first instance and recover the same from the owner of the vehicle. The award passed by the Tribunal is unaltered in respect of other aspects.

10. With the above modification, this Civil Miscellaneous Appeal is disposed of. The appellant / Insurance Company is directed to deposit the entire award amount to the credit of M.C.O.P.No.17 of 2006, on the file of the Motor Accident Claims Tribunal / Sub Court, Karur, along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same on filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

08.09.2022

Index :Yes/No
Internet :Yes/No
trp

To

1. The Motor Accident Claims Tribunal Sub Court, Karur.

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

A.A. NAKKIRAN, J.,

trp

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