BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.09.2022

Pronounced on : 20.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.864 of 2009
and
M.P.(MD)No.1 of 2009

M/s. National Insurance Co.Ltd.,
through its Branch Manager,
Vellore. ...Appellant / 2nd respondent

Vs

1.Minor.Sahaya Sachin
represented through his mother and
next friend Suganya ...1st respondent / petitioner

2.Prakasam ... 2nd Respondent / 1st Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of M.V.Act, to set aside the decree and judgment dated 20.01.2009 passed in M.C.O.P.No.93 of 2006 on the file of the Additional Sub Judge/MACT/Fast Track Court No.1, Tirunelveli.

For Appellant : M/s.P.Malini

For R1 : Mr.T.Selvakumaran

For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.93 of 2006 on the file of the Additional District Judge, Fast Track Court No.I, Tirunelveli. The appellant is the second respondent. The first respondent is the claimant. The second respondent is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 30.08.2005, at about 11.30 am, when the petitioner was standing near the Chettikulam CSI Church bus stop, a mini tempo bearing registration number TN 23 AA 4901 was driven by its driver in a rash and negligent manner, dashed against the petitioner. The petitioner sustained injury and he was taken to Sriram Hospital, Nagercoil and he took treatment from 30.08.2005 till 07.10.2005 as inpatient. The minor petitioner was aged about 4 years and was studying in LKG. The petitioner claimed Rs.5,00,000/- as compensation.

3.Brief substance of the counter filed by the second respondent is as follows:

The policy copy was issued on 29.12.2004 on receipt of a cheque for a sum of Rs.10,520/-. But on 31.12.2004, the cheque was returned as 'insufficient fund'. The respondent cancelled the policy on 03.01.2005 and intimated the same to the first respondent and the RTO office. Since the cheque was returned, the insurance company is not liable to pay compensation. There was no insurance policy on the date of accident. Moreover, the first respondent sold the vehicle to one person by name Anbu, a resident of Idinthakarai. The manner of accident as narrated in the petition is wrong. The injuries are simple. The claim is excessive.

4.Four witnesses were examined and six documents were marked on the side of the petitioner. One witness was examined and ten documents were marked on the side of the respondent. The Tribunal awarded a sum of Rs.2,22,620/- to be paid by the respondents.

5.Against the award, the second respondent filed this appeal on the following grounds:

The Tribunal failed to note that the cheque issued by the petitioner for payment of premium was returned with an endorsement 'insufficient fund' and the policy was cancelled and the same was intimated to the owner of the vehicle and the Regional Transport Authority. The Tribunal failed to consider that the accident has happened on 30.08.2005, after the communication of cancellation of the policy. The Tribunal failed to appreciate the conditions in the policy that *'warranted that in case of dishonour of premium cheque, this document stands automatically cancelled Ab intio'.* The Tribunal is wrong in following the judgment of the High Court of Andhra Pradesh reported in 2008(1) TAC 929 AP, wherein the insurance company failed to prove that it intimated the owner of the vehicle, the fact that the cheque return. Wherein in the present case, the return of the cheque was duly intimated to the owner of the vehicle and sufficient opportunity to the owner to remit the premium was given. The Tribunal failed to appreciate that prescriptions for the medicine was not filed on the side of the claimant. The period of treatment, nature of treatment, were not properly proved. The Doctor who gave treatment was examined as P.W.3 but the disability certificate was not issued by him. Disability certificate was issued only by P.W.4 and the same is not acceptable. The amount awarded towards medical expenses, pain and sufferings are excessive.

6.On the side of the appellant, it is stated that the premium was paid through a cheque and the cheque was returned for want of sufficient amount. The policy was issued on 29.12.2004. The cheque was dishonoured on 30.12.2004. Immediately, on 03.01.2005, a notice was sent to the owner of the vehicle and to the Regional Transport Office, regarding the cancellation of the policy. Ex. R8 and Ex.R10 are the returned covers. Ex.R6, Ex.R7 and Ex.R9 are the notices. The appellant to be exonerated from the liability and the liability to be fixed on the owner of the vehicle. A judgment of the Hon'ble Kerala High Court reported in **2019(1) TN MAC 274(FB)(Ker.)** in the case of **Prasanna B Vs Kabeer and another**, is cited, wherein it is held that,

> "Burden lies on insured/addressee to rebut presumption by conclusive *evidence that he did not really receive Letter or avoided deliberately - Burden does not lie on Insurer to prove conclusively that intimation of cancellation was in fact served on insured -*

Decision holding that it is obligation of Insurer to establish service of Intimation, overruled - No liability on Insurer in respect of accident after service of Intimation."

7.On the side of the respondent it is stated that the policy is valid from 29.12.2004 till 28.12.2005. The accident has happened on 30.08.2005 and the policy was in force at the time of accident. A judgment of the Calcutta High Court reported in **2007 ACJ 1467** in the case of **Pranab Kumar Mitra and another Vs Oriental Insurance Co.Ltd and another**, is cited, wherein, it is held that,

"*whether the insurance company is liable for third party claim - Held: yes; insurance company directed to make payment to the claimants and may recover the amount from owner of vehicle.*"

On the side of the respondent it is further stated that the insurance company has to pay the compensation and to recover the same from the owner of the vehicle.

8.It is seen that a cheque was issued for payment of premium and the copy of the cheque was marked as Ex.R2. The cheque was returned for want of sufficient fund and a memo issued by the bank is marked as Ex.R3. On the basis of the memo, a letter intimating the cancellation of policy was issued by the insurance company. Copy of the letter was marked as Ex.R4 and the endorsement for cancellation was marked as Ex.R5. The policy was cancelled and the copy of the cancellation of the policy was marked as Ex.R1. The cancellation of the policy was intimated to the Regional Transport Office and the owner of the vehicle. The cover returned was marked as Ex.R8. Again a second notice was sent to the owner of the vehicle and a copy of the same was marked as R9. The second notice was also returned. The returned cover was marked as Ex.R.10. From Ex.R4 to Ex.R10, it is clear that the insurance company has taken sufficient steps to inform the cancellation of the policy to the owner of the vehicle. Since the premium was not paid, the cancellation of the policy is valid. After the cancellation of the policy was duly intimated to the owner of the vehicle and the RTO office, the liability cannot be fixed on the insurance company. In the above circumstances, the liability is fixed on the owner of the vehicle and the insurance company is exonerated from the liabilities. The second respondent/owner of the vehicle is liable to pay compensation to the claimants.

9.Accordingly, this Civil Miscellaneous Appeal is allowed and the award of the Tribunal is modified with the following conditions:

(i) The second respondent herein /owner of the vehicle is directed to deposit a sum of Rs.2,22,620/- (Rupees two Lakhs Twenty Two Thousand Six Hundred and Twenty only) together with interest at the rate of 7.5% per annum and proportionate costs to the credit of M.C.O.P.No.93 of 2006 on the file of the Additional Sub Judge/MACT/Fast Track Court No.1, Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this order. The appellants are not entitled for any interest for the default period.

(ii) On such deposit being made by the second respondent/ owner of the vehicle, the entire amount of Rs.2,22,620/- (Rupees two Lakhs Twenty Two Thousand Six Hundred and Twenty only), is ordered to be deposited in any one of the nationalized bank until they attain majority and the natural Guardian and next friens Suganya/mother of the minor claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

(iii)Since the appellant/ insurance company is exonerated from the liabilities, the appellant is permitted to get refund of the amount already deposited by them before the Tribunal. Consequently, connected miscellaneous petition is closed.

20.10.2022

Index: Yes / No
Internet : Yes / No

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To

1.The Additional Sub Judge/MACT/Fast Track Court No.1, Tirunelveli.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

R. THARANI, J

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