



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 26.10.2021

Delivered On : 19.01.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.236 of 2014

The TATA AIG General Insurance Co. Ltd.,
Madurai, through its Branch Manager,
No.1, RMR Complex North Gate,
S.S.Colony, Madurai.

..Appellant/Respondent-2

Vs.

1.S.A.Sundarasamy
2.Selva Mariammal

.. Respondents /
Petitioner/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 28.10.2013 made in M.C.O.P.No.8 of 2010 on the file of the Motor Accident Claims Tribunal, (Principal Sub Court), Madurai.

For Appellant : Mr.J.S.Murali

For 1st Respondent : Mr.G.Venugopal

For 2nd Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.8 of 2010 dated 28.10.2013, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Madurai.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.8 of 2010, claiming compensation for the injuries sustained by him, in an accident that took place on 28.05.2009. The Tribunal has awarded a sum of Rs.1,78,275/- (Rupees One Lakh Seventy Eight Thousand Two Hundred and Seventy Five only) as compensation. Against which, the appellant



has preferred this appeal.

3. Brief substance of the claim petition in M.C.O.P.No.8 of 2010 is as follows:

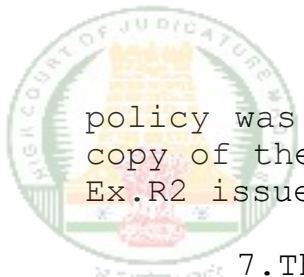
On 28.05.2009, at about 11.00 a.m., when the petitioner was riding his bicycle, an ambassador car bearing registration No.TN-58-M-3435 driven by its driver in a rash and negligent manner, dashed against the bicycle from behind. The petitioner sustained injuries. He was taken to Shenbagam hospital, Madurai and he took treatment as 'in patient' from 28.05.2009 to 01.07.2009. The petitioner was aged about 78 years. He was an agriculturist earning Rs.5,000/- (Rupees Five Thousand only) per month. He sustained permanent disability and claimed a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as compensation.

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

The premium was paid through a cheque and the same was dishonoured. The policy of insurance was cancelled and the intimation was duly sent to the first respondent and to the concerned transport authorities. Thereafter, no premium was paid to cover the vehicle. The second respondent is not liable to indemnify the first respondent. The car was driven by its driver in a slow and steady manner. When the car was passing the bicycle, the petitioner lost his balance and he hit against the left side of the car and fell down and the accident was not due to the negligence of the car driver. The age, income, occupation, disability and medical expenses are all denied. The amount claimed is excessive.

5. The first respondent was set as exparte. On the side of the claimant, three witnesses were examined and 16 documents were marked. On the side of the respondents, one witness was examined and three documents were marked. After trial, the Tribunal has awarded a sum of Rs.1,78,275/- (Rupees One Lakh Seventy Eight Thousand Two Hundred and Seventy Five only) as compensation to be paid by the second respondent. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6. On the side of the appellant, it is stated that the trial Court failed to consider that the appellant is not bound to indemnify the owner of the vehicle, as the cheque was returned and there was no payment of premium for the policy. The second respondent has cancelled the policy on account of the dishonor of the cheque. The cancellation of policy was intimated to the owner of the vehicle. Ex.R1 to Ex.R3 clearly prove the same. The owner of the vehicle has not chosen to contest the case and failed to prove that there was a valid contract of insurance on the date of accident. The Tribunal failed to order to recover the amount from the owner. The cheque was returned by the bank and the returned cheque was marked as Ex.R1. The cheque dated 17.04.2009 was returned by the HDFC bank



policy was sent by the appellant to the owner of the vehicle and a copy of the same was marked as Ex.R2. The despatch details regarding Ex.R2 issued by the postal department was marked as Ex.R3.

7.The learned counsel for the appellant would rely upon the judgment of this Court in the case of **New India Assurance Company Ltd., v. S.Sivapathi and others** reported in **2011 (1) TNMAC 832**, wherein it is stated as follows:

"claimants having failed to establish that there was a valid insurance policy on date of accident, insurer cannot be said to be statutorily liable to pay compensation - liability fastened on insurer by Tribunal set aside"

8.The learned counsel for the appellant would rely upon a judgment of this Court in the case of **National Insurance Company Ltd., v. Samiyathal and others** reported in **2004 (1) TNMAC 455**, wherein it is stated as follows:

"Invalid driving licence - violation of policy condition - insurance company to substantiate plea by necessary material that driver had no valid driving licence on date of accident - insurance company sent notice Ex.R2 to driver to produce his driving licence but same returned unserved."

9.The learned counsel for the appellant would rely upon the judgment of the Supreme Court in the case of **Pappu and Ors. v. Vinod Kumar Lamba and another** reported in **2018 SAR (Civil) 410**, wherein it is stated as follows:

"Accident claim - owner vis-a-vis insurer - liabilities - merely producing a valid insurance certificate in respect of the offending truck was not enough for the respondent no.1/owner to make the insurance company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle - The insurance company can be fastened with the liability on the basis of a valid insurance policy only after the basis facts are pleaded and established by the owner of the offending vehicle"

10.On the side of the first respondent, a copy of the insurance policy was filed. The driver admitted guilty and he has paid the fine. The address of the owner was not found place in Ex.R3. The appellant failed to prove that the policy was cancelled and the same was intimated to the owner of the vehicle. Even if the policy was cancelled for the return of the cheque, the insurance company is liable to pay compensation.

11.The learned counsel for the first respondent would rely upon the judgment of the Hon'ble Supreme Court in the case of **New**



India Assurance Co. Ltd., v. Rula and Others reported in (2000) 3 SCC 195, wherein it is stated as follows:

"Insurance policy - third party risk - policy issued against cheque - subsequent dishonour of cheque not a ground for cancellation of insurance policy - insurer liable to compensate third party"

12.The learned counsel for the first respondent would rely upon the judgment of this Court in the case of **New India Assurance Company Ltd., v. V.Bommi and others** reported in 2009 (4) L.W. 62, wherein it is stated as follows:

"A policy can be cancelled only after ensuring that the vehicle is insured elsewhere, at least for liability only cover and after surrender of the original certificate of insurance for cancellation.

The Full Bench of Kerala High Court in 2006 ACJ 106 (**Oriental Insurance Co. Ltd., v. Sivankutty and others**) has held that the insurer cannot disown liability to a third party and that their remedies have to be worked out against the insured. It is for this reason that in 1987 ACJ 411 (**Skandia Insurance Co. Ltd., v. Kokilaben Chandravadan**)"

13.The learned counsel for the first respondent would rely upon the judgment of this Court in the case of **United India Assurance Company Ltd., v. Laxmamma and others** reported in (2012) 5 SCC 234, wherein it is stated as follows:

"This decision, which is a three-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the insurance policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the issuance of the policy on the date on which the accident took place."

14.The learned counsel for the first respondent would rely upon the judgment of this Court in the case of **Prema and others v. Sampath Kumar and others** reported in 2019 (2) TNMAC 705, wherein it is stated as follows:

"Liability of insurer in respect of third party claim - Tribunal, holding that cancellation of policy not a bar to satisfy claims of Third parties, directing insurer to pay and recover

Claim of Third party cannot be defeated for self created predicament of insurer in issuing policy without actually receiving premium - Cancellation of policy only entitles insurer to recover award amount paid to third party - decisions in Bommi and Laxmamma, relied upon -



tribunal rightly directed insurer to pay and recover."

15.It is seen that a copy of the policy was marked by the claimant. The case of the appellant is that the policy was cancelled and the cancellation of the policy was intimated to the owner of the vehicle. Ex.R1 to Ex.R3 reveals that the cancellation was intimated to the second respondent/owner of the vehicle. But cancellation of policy is not a ground to deny the claims of third parties. Hence, it is decided that due to the cancellation of the policy, the appellant is liable to pay the first respondent/claimant and the appellant is entitled to recover the same from the second respondent/owner of the vehicle. There is no dispute regarding the quantum fixed by the Tribunal. The order of the Tribunal is modified to the effect that the appellant/insurance company is directed to pay the compensation with interest and costs to the first respondent/claimant and the appellant/insurance company is entitled to recover the same from the second respondent/owner of the vehicle.

16.Hence, it is decided that the first respondent herein is entitled to a sum of Rs.1,78,275/- (Rupees One Lakh Seventy Eight Thousand Two Hundred and Seventy Five only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The appellant has to pay the claimant and the appellant is entitled to recover the same from the owner of the vehicle.

17.The appellant is directed to deposit Rs.1,78,275/- (Rupees One Lakh Seventy Eight Thousand Two Hundred and Seventy Five only) with 7.5% interest from date of the claim petition till the date of realization with cost and the amount, if has not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. The appellant is at liberty to recover the award amount from the second respondent/owner of the vehicle. On such deposit, the first respondent is permitted to withdraw the award amount, with interest after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. In the result, this Civil Miscellaneous Appeal is **partly allowed**. No Costs.

Sd/-

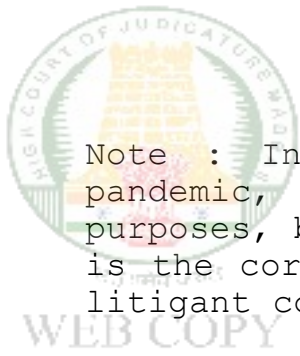
Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

MRN



Note : In view of the present lock down owing 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 Accidents Claims Tribunal, Principal Sub Judge,
Madurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-1661[F] dated 19/01/2022)

+1 CC to M/s.J.S.MURALI, Advocate (SR-1778[F] dated 19/01/2022)

C.M.A. (MD) No.236 of 2014
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RD(17.02.2022) 6P 6C