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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1291 of 2016
And
C.M.P.Nos.9934 of 2016 and 23233 of 2023

Reliance General Insurance Company Ltd.,
1st Floor, Gee Jay Arcade,
141/71, West Thiruvenkatasamy Road,
R.S.Puram, Coimbatore. ... Appellant

Vs.

1.Angammal
2.Karthikeyan
3.Balakumar
4.Mohankumar
5.Chinnammal
6.Nanda Ganesh
7.Chandrasekar ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 23.01.2015 made in M.C.O.P.No.709 of 2010 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur.

For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.Ma.P.Thangavel for R1 to R5
R6 – No Appearance
R7 – Notice Not Ready

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J U D G M E N T

The third respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the award and decree dated 23.01.2015 passed by the Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur, in M.C.O.P.No.709 of 2010.

2.The brief facts of the case is that on 25.05.2010, at about 08.10 p.m., the deceased Periasamy was riding the two wheeler bearing Registration No.TN 37 AC 2711 in Palladam to Kovai Road near S.R.C.Company. At that time another two wheeler bearing Registration No.TN 37 AJ 5025 came from behind in a rash and negligent manner and dashed against the two wheeler in which the deceased travelled, due to which, the deceased sustained injuries and was taken to Government Hospital, Palladam and later to KMCH Hospital where he died on 26.05.2010.

3.Thereafter, the dependants of the deceased Periasamy/ respondents 1 to 5 filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.20 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of

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Rs.10,75,000/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and costs and directed the appellant Insurance Company to deposit the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal. The Tribunal has further observed that the appellant can take steps separately to recover the compensation amount from the owner of the vehicle.

4.The learned counsel appearing for the appellant submitted that the appellant has filed this appeal questioning the liability. The learned counsel further submitted that though initially the appellant filed counter affidavit before the Tribunal admitting the insurance policy, thereafter filed another counter affidavit stating that on the material date of accident there was no insurance for the vehicle bearing Registration No.TN 37 AJ 5025 with the appellant and also marked copy of the policy as Ex.R1 through R.W.1. As per Ex.R1, the policy is valid from 27.05.2010 to 26.05.2011, however, the Tribunal perversely fastened the liability on the appellant and awarded compensation, which is not sustainable.

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5.The learned counsel appearing for the appellant further submitted that the claimants claim that the owner of the vehicle paid premium through proforma, however, bare perusal of the proforma did not reveal any date, signature of the Insurance Company and premium amount and simply without any authenticity, simply a piece of paper was produced before the Tribunal stating that premium was paid on 23.05.2010. The date mentioned is the date on which stamp duty was paid. It is the duty of the Insurance Company to pay stamp duty while issuing the policy. It is the lumpsum payment paid by the Insurance Company to the Government. Admittedly, on the date of accident, there is no valid policy. In the absence of valid policy, fastening the liability as against the appellant is not sustainable one.

6.Per contra, the learned counsel appearing for the respondents 1 to 5/ claimants submitted that initially, the appellant filed counter before the Tribunal categorically admitting that the policy is a valid policy. In paragraph no.5 of the counter, it is stated that "The insurance policy issued by this respondent in favour of the insured bears No.2 for the period from 15.05.2010 to 14.04.2011 is in the possession of the insured.", however, thereafter the appellant has

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stated that the insured may kindly be directed to produce the original insurance policy and thereafter the appellant marked copy of the policy as Ex.R1 through R.W.1. As per the counter filed by the appellant before the Tribunal, the policy is valid from period from 15.05.2010 to 14.04.2011. The date of the accident is 25.05.2010. Hence, the policy is a valid policy. Inorder to substantiate the same, the proposal form for package policy and liability only policy for private cars/ motorised two wheelers was marked. The Tribunal after considering the factual aspects, passed the impugned award, which warrants no interference.

7.In support of his contentions, the learned counsel appearing for the respondents 1 to 5/ claimants relied upon the decision of the Hon'ble Apex Court reported in ***2018 (1) TN MAC 681 (SC) [Mangla Ram Vs. Oriental Insurance Co. Ltd., and others]*** and submitted that the concept of pay and recover can be adopted in the case, directing the appellant to pay the compensation at the first instance with liberty to recover the same from the owner of the vehicle.

8.Heard the learned counsel appearing for the appellant as well

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as the learned counsel appearing for the respondents 1 to 5 claimants. There is no representation for the sixth respondent. Though the appeal has been filed during the year 2016, till date, the appellant has not taken any steps to serve notice on the seventh respondent. Though the appellant has now filed C.M.P.No.23233 of 2023 seeking to order substituted service to the seventh respondent, this Court is not inclined to entertain the same and considering the pendancy of the appeal, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

9.Admittedly, on 25.05.2010, at about 08.10 p.m., the deceased Periasamy was riding the two wheeler in Palladam to Kovai Road near S.R.C.Company. At that time another two wheeler came from behind in a rash and negligent manner and dashed against the two wheeler due to which, the deceased sustained injuries and was taken to Government Hospital, Palladam and later to KMCH Hospital where he died on 26.05.2010.

10.The accident and the manner in which the accident happened

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are not disputed. The only dispute is whether the policy is valid at the time of accident or not.

11.Admittedly, the copy of the policy was marked as Ex.R1 through R.W.1. Perusal of Ex.R1, the policy cover note was issued on 26.05.2010 and the policy is valid from 27.05.2010 to 26.05.2011. The date of accident is 25.05.2010 and there is no valid policy on the date of accident.

12.The claimants claim that the policy is a valid policy and inorder to substantiate the same, have marked proposal form as Ex.P8. This Court vide order dated 11.10.2023 had called for a report from the Tribunal as to the marking of Ex.P8, pursuant to which, the Tribunal has sent a report dated 17.10.2023 along with copy of Ex.P8. The report reveals that Ex.P8 is the proposal form for package policy and liability only policy for private cars/ motorised two wheelers and Ex.P8 was marked by R.W.1 during cross examination.

13.In Ex.P8, no date is mentioned, amount is not mentioned and simply copy was issued by the Tiruppur office and no corresponding

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entries were available as to when the original policy was issued by the Insurance Company. Further it is only a xerox copy and inorder to substantiate the same, no witness was examined on behalf of the owner of the vehicle.

14.Perusal of records reveal that the Insurance Company had paid stamp duty vide receipt dated 23.05.2010. It is the duty of the Insurance Company to pay stamp duty in lumpsum for all the policies. Admittedly, cover note was issued on 26.05.2010 and the policy is valid from 27.05.2010 to 26.05.2011. The date of accident is 25.05.2010 and there is no valid policy on the date of accident. In the absence of valid policy, fastening the liability as against the appellant is not sustainable one.

15.The decision relied upon by the learned counsel appearing for the respondents 1 to 5/ claimants is not applicable to the present case on hand, since in that case, it is admitted fact that the cover note was issued by an Authorized Officer and the Authorized Officer was in the service of the Insurance Company. Hence, the Hon'ble Apex Court ordered for pay and recovery.

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16.It is relevant to extract hereunder the relevant portion of the decision of this Court reported in ***2017 (1) TN MAC 168 (DB) [The Branch Manager, National Insurance Co. Ltd., Vs. Vijayalakshmi and others]***:

> *18.In **Oriental Insurance Co. Ltd. v. Venkataraman and Others** [2013 (1) TN MAC 460], accident took place at 1.00 p.m. on 27.10.1999. The plea put forward by the appellant insurance company was that the accident took place at 1.00 p.m. on 27.10.1999 and whereas the policy took effect only from 28.10.1999 and as such, they are not liable to pay compensation. A Single Bench of this Court, on appraisal of the facts, found that Ex.P5 receipt was issued by the Insurance Company on 27.10.1999 and whereas Ex.R1-Insurance Policy states that the policy period commences by 12 midnight on 28.10.1999 on account of collection of premium on that date and therefore held that the Insurance Company having accepted the premium and having issued the policy on that date, cannot say that the period of coverage was only from the midnight on 28.10.1999. The learned Judge, in order to come to such conclusion,*

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placed reliance upon Section 64-VB of the insurance company. This Court, with respect, is unable to agree to the reasons assigned in the said decision, as various decisions rendered by the Hon'ble Apex Court held otherwise and in favour of the insurance company.

19. Therefore, it is to be held that coverage commences from the time and date mentioned in the Insurance policy as it is being a Special Contract and admittedly, in the case on hand, the policy came to be issued after the accident and so also the coverage and as such, the appellant/insurance company cannot be mulcted with the liability to pay compensation by indemnifying the owner of the vehicle."

17.In the present case, there is no valid policy on the date of the accident and the policy is valid from 27.05.2010 to 26.05.2011 midnight 12 O' Clock. When there is no period of coverage, fastening the liability on the appellant is not sustainable. Hence, the liability of the appellant/ Insurance company is liable to be set aside.

18.The civil miscellaneous appeal is allowed. The judgment and decree dated 23.01.2015 passed by the Motor Accidents Claims

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Tribunal, I Additional District Court, Tiruppur, in M.C.O.P.No.709 of 2010, is set aside as against the insurer/ appellant and the claimants/ respondents 1 to 5 are directed to proceed as against respondents 6 and 7/ the owner of the vehicle for recovery of the award amount in the manner known to law. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
I Additional District Court, Tiruppur.

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