



CMA. Nos.4124/2019 - 3679/2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.12.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO. 4124 OF 2019

AND

C.M.A. NO. 3679 OF 2021

The Manager
M/s.Cholamandalam MS General
Insurance Co. Ltd.
Motor TP Claims
No.5, Thambu Chetty Street
Chennai 600 001.

.. Appellant in CMA 4124/2019

Tmt. Lalitha

.. Appellant in CMA 3679/2021

- Vs -

1. Tmt. Lalitha

2. B.Raja

.. Respondents in CMA 4124/2019

1. B.Raja

2. The Manager

M/s.Cholamandalam MS General
Insurance Co. Ltd., Motor TP Claims
No.5, Thambu Chetty Street
Chennai 600 001.

.. Respondents in CMA 3679/2019



CMA. Nos.4124/2019 - 3679/2021

WEB COPY Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles

Act, 1988, against the judgment and decree dated 28.04.2018 made in MCOP No.293/2015 on the file of the Motor Accident Claims Tribunal-I, Tiruvallur (Special District Court, Tiruvallur – Special District Judge).

For Appellants : Mr. N.Vijayaraghavan for
M/s.M.B.Gopalan Associates in
CMA 4124/2019
Mr. U.Chithambaram for
M/s. G.Balakrishnan in CMA
3679/2021

For Respondents : Mr. P.Kavinprabhu for
Mr. Jayanth K.Sha in CMA
4124/2019 for R-2 and for R-1 in
CMA 3679/2021
Mr. N.Vijayaraghavan for
M/s. M.B.Gopalan Associates for
R-2 in CMA 3679/2021
Mr. U.Chithambaram for
M/s. G.Balakrishnan for R-1 in
CMA 4124/2021

COMMON JUDGMENT

While the insurance company, viz., the appellant in CMA No.4124/2019, has questioned the liability of the insurance company to pay the compensation as ordered by the Tribunal, CMA No.3679/2021 has been



CMA. Nos.4124/2019 - 3679/2021

filed by the claimant assailing the quantum of compensation and further claiming enhanced compensation.

2. For brevity, the appellant in CMA No.4142/2019 and the appellant in CMA No.3679/2021 will be referred to as insurance company and claimant.

3. On 21.4.2014, at about 6.30 p.m., when the deceased was driving his two wheeler bearing Regn. No.TN-20-BJ-1004, the Eicher Van, bearing Regn. No.TN-22-AC-5245, belonging to the 2nd respondent in CMA No.4124/2019, driven by its driver in a rash and negligent manner, hit against the two wheeler driven by the deceased in which the deceased sustained grievous injuries and died on the spot. Since the family had lost its sole bread winner, the claimant, viz., the mother of the deceased, filed claim petition claiming a compensation of Rs.15,0,000/= by filing MCOP No.293/2015.

4. Before the Tribunal, the claimant examined herself as P.W.1 and one other witness as P.W.2 and marked Exs.P-1 to P-8. On behalf of the insurance company, R.W.s 1 and 2 were examined and Exs.R-1 to R-5 were marked.



CMA. Nos.4124/2019 - 3679/2021

WEB COPY

Based on the oral and documentary evidence, the Tribunal allowed the claim in favour of the claimant by awarding a compensation of Rs.9,06,000/- together with interest at 7.5% p.a. and costs from the date of petition till the date of deposit. Aggrieved by the inadequate quantum of compensation, while the claimant has filed the present appeal, the insurance company has assailed the said order on the ground that the vehicle was not possessed of a valid insurance coverage.

5. Learned counsel appearing for the insurance company submitted that on the date of the accident, the Eicher van was not possessed of a valid insurance coverage and the coverage for the said van was taken only on the next day, viz., on 22.4.2014 by paying the premium in cash and, therefore, for the accident, which took place on the previous day, when the vehicle was not possessed of a valid insurance, the insurance company cannot be mulcted with the liability to pay the amount and recover the same from the owner of the vehicle. In support of the aforesaid submission, learned counsel placed reliance upon the decision of the Apex Court in ***Deddappa & Ors. – Vs – The Branch Manager, National Insurance Co. Ltd. (2008 (2) TN MAC 138 (SC))***.



CMA. Nos.4124/2019 - 3679/2021

WEB COPY

6. Learned counsel appearing for the claimant submitted that the compensation awarded by the Tribunal is inadequate on all the heads and proper appreciation with regard to compensation has not been made by the Tribunal.

7. Learned counsel for the claimant further submitted that the act of the owner of the vehicle in not renewing the insurance cannot be put against the claimant and the compensation under the Motor Vehicles Act being a benevolent legislation, rightly the Tribunal had ordered the insurance company to pay the compensation and recover the same from the owner of the vehicle, which does not require any interference.

8. Learned counsel appearing for the owner of the vehicle submitted that proposal form had been submitted way back on 19.4.2014 even before the date when the insurance coverage fell due and the amount having been paid necessarily the insurance company ought to cover the vehicle and, therefore, the order of the Tribunal directing the insurance company to pay



the amount and recover the same from the owner of the vehicle is wholly unsustainable and, accordingly, prays for setting aside the said portion directing recovery from the owner of the vehicle.

9. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing for the insurance company and also the learned counsel appearing for the owner of the vehicle and also perused the decision to which this Court's attention was drawn.

10. The law of contracts, which is the guiding factor in insurance claims, has been succinctly dealt with by the Apex Court in the case of ***Deddappa & Ors. – Vs – The Branch Manager, National Insurance Co. Ltd. (2008 (2) TN MAC 138 (SC))***, wherein, in case of cheque dishonour in the case of policies which cover the vehicle, the liability being contractual in nature, the Apex Court has held as under:-

17. We may, however, notice that in terms of sub-section (5) of Section 147 and sub-section (1) of Section 149 of the Act, the Insurance Company became liable to satisfy awards of compensation in respect thereof, notwithstanding its entitlement to avoid or cancel the



WEB COPY

policy for the reason that the cheque issued for payment of premium thereon had not been honoured.

18. The said question, however, was left open in Inderjit Kaur (supra).

* * * * *

21. Almost an identical question again came up for consideration before this Court in National Insurance Co. Ltd. v. Seema Malhotra and Ors. [(2001) 3 SCC 151], a Division Bench noticed both the aforementioned decisions and analysed the same in the light of Section 64-VB of the 1938 Act. It was held :

"17. In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.

18. Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured.



WEB COPY



CMA. Nos.4124/2019 - 3679/2021

by the bank concerned the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation.

19. Under Section 25 of the Contract Act an agreement made without consideration is void. Section 65 of the Contract Act says that when a contract becomes void any person who has received any advantage under such contract is bound to restore it to the person from whom he received it. So, even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured, the insurer is entitled to get the money back.

20. However, if the insured makes up the premium even after the cheque was dishonoured but before the date of accident it would be a different case as payment of consideration can be treated as paid in the order in which the nature of transaction required it. As such an event did not happen in this case, the Insurance Company is legally justified in refusing to pay the amount claimed by the respondents".

22. A contract is based on reciprocal promise. Reciprocal promises by the parties are condition



WEB COPY

precedents for a valid contract. A contract furthermore must be for consideration.

23. In today's world payment made by cheque is ordinarily accepted as valid tender. Section 64VB of the 1938 Act also provides for such a scheme.

* * * * *

25. Recently again in New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya and Anr. [(2006) 5 SCC 192], although in the context of the Workmen Compensation Act, 1923, Balasubramanyan, J opined :

"It is not brought to our notice that there is any other law enacted which stands in the way of an insurance company and the insured entering into a contract confining the obligation of the insurance company to indemnify to a particular head or to a particular amount when it relates to a claim for compensation to a third party arising under the Workmen's Compensation Act. In this situation, the obligation of the insurance company clearly stands limited and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. Unlike the scheme of the Motor Vehicles Act the Workmen's Compensation Act does not confer a right on the claimant for compensation under that Act to claim the payment



WEB COPY



CMA. Nos.4124/2019 - 3679/2021

of compensation in its entirety from the insurer himself".

It was further observed:-

"The law relating to contracts of insurance is part of the general law of contract. So said Roskill, L.J. in Cehave v. Bremer. This view was approved by Lord Wilberforce in Reardon Smith v. Hansen-Tangen (All ER p. 576 h) wherein he said:

"It is desirable that the same legal principles should apply to the law of contract as a whole and that different legal principles should not apply to different branches of that law."

A contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense. (See Colinaux's Law of Insurance , 7th Edn., para 2-01.) A policy of insurance has therefore to be construed like any other contract. On a construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay among other things under the Workmen's Compensation Act. Unless one is in a position to void the exclusion clause



WEB COPY



CMA. Nos.4124/2019 - 3679/2021

concerning liability for interest and penalty imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts.""

26. We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-à-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim."

(Emphasis Supplied)

11. From the above ratio laid down by the Apex Court, it crystallises that the contract of insurance is a reciprocal promise, which is to be performed by the insurer only on the insured performing his part of the promise. The insurance policy and the terms governing the same are the guiding factor on the basis of which the reciprocal promise is to be honoured.



CMA. Nos.4124/2019 - 3679/2021

WEB COPY

12. This Court also, in ***Royal Sundaram Alliance Co. Ltd. – Vs – Pravin @ Ramija & Ors. (CMA No.2439/2009 – Dated 29.11.2023)***, following the decision in *Deddappa case (supra)* has held that in the absence of a valid insurance policy, the insurer is not liable to indemnify the owner of the vehicle towards any accident that had happened when there was not valid insurance policy.

13. In the case on hand, a proposal has been submitted on behalf of the owner of the vehicle on 19.04.2014, but it had not crystallised into a policy of insurance. The amount towards the said policy had been paid on 22.04.2014, as is evident from the receipt issued by the insurance company. In furtherance to the receipt of amount, policy has also been issued on 22.04.2014 and the coverage under the policy is to start from 10.00 hours on 24.04.2014 to the midnight on 23.04.2014.

14. The accident had happened on 21.04.2014 at about 6.30 p.m., at which point of time, there was no valid insurance of coverage covering the offending vehicle. The proposal, though was submitted on behalf of the



CMA. Nos.4124/2019 - 3679/2021

WEB COPY

owner of the vehicle on 19.4.2014, however, it is not a cover note, which would partake the character of an insurance policy and, therefore, the proposal cannot be extrapolated for the purpose of bringing the same within the ambit of an insurance policy. Upon submission of a proposal, it is for the insurer to accept the same on such terms as is necessary. In the case on hand, the insurance company had accepted the proposal and issued the policy with a coverage starting from 10.00 hours on 22.04.2014 prior to which point of time, there was no valid policy. Therefore, the accident having taken place on 21.04.2014, during which point of time there was no valid insurance coverage for the vehicle, the insurance company cannot be fastened with any liability to pay the compensation and recover the same from the owner of the vehicle. It is purely for the owner of the vehicle alone to pay the compensation and the insurance company cannot be made liable to indemnify the owner of the vehicle by paying the claimant. Therefore, the order of the Tribunal directing the insurance company to pay the compensation and, thereafter, recover the same from the owner of the vehicle is wholly unsustainable and is against the ratio laid down in *Deddappa case (supra)* and, necessarily, the appeal in CMA No.4124/2019 filed by the insurance company deserves to be allowed.



CMA. Nos.4124/2019 - 3679/2021

WEB COPY

15. Insofar as the appeal filed by the claimant seeking enhancement of compensation is concerned, the case of the claimant is that adequate compensation has not been awarded under the respective heads of compensation. In all, the Tribunal has awarded a sum of Rs.9,06,000/- under the various heads as under :-

Head of Compensation	Amount awarded by Tribunal
Loss of Income	Rs. 8,16,000/=
Loss of Love & Affection	Rs.50,000/=
Loss of Estate	Rs.15,000/=
Transportation	Rs.10,000/--
Funeral Expenses	Rs.15,000/=
TOTAL	Rs.9,06,000/=

16. Insofar as the compensation awarded under the heads 'Loss of Love and Affection', 'Loss of Estate', 'Transportation' and 'Funeral Expenses' are concerned, the said compensation are awarded on the basis of the ratio laid down by the Apex Court and the compensation is just and reasonable and the same cannot be said to be inadequate and, accordingly, the compensation under the aforesaid heads are confirmed.



WEB COPY

17. Insofar as the compensation awarded under the head 'Loss of Income' is concerned, the Tribunal has fixed the notional monthly income of the deceased at Rs.8,000/- as the claimant had not proved the monthly income of the deceased through any documentary evidence.

18. According to the claimant, the deceased was earning his livelihood as a driver and was earning Rs.15,000/- per month. However, as aforesaid, no documents to substantiate the income has been filed and in the said backdrop, applying the ratio laid down in the case of ***Syed Sadiq – Vs – Divisional Manager, United India Insurance Co. Ltd. (2014 (2) SCC 735)***, the notional fixed by the Tribunal cannot be said to be unreasonable or inadequate. Further, the deduction of amount towards the personal expenses of the deceased and the adoption of multiplier is also based on the ratio laid down by the Apex Court in various decisions and, therefore, the quantum of compensation arrived at under the head 'Loss of Income' by the Tribunal cannot be said to be erroneous or inadequate. Accordingly, the compensation of Rs.8,16,000/- awarded under the head 'loss of income' is also confirmed



CMA. Nos.4124/2019 - 3679/2021

and the appeal in CMA No.3679/2021 is liable to be dismissed confirming the award passed by the Tribunal.

19. In the result, the following order is passed :-

- i) CMA No.4124/2019 filed by the insurance company is allowed;*
- ii) CMA No.3679/2021 filed by the claimant is dismissed confirming the judgment and decree passed by the Tribunal.*
- iii) The appellant in CMA No.3679/2021 is granted liberty to proceed against the owner of the vehicle to realise the compensation awarded by the Tribunal in the manner known to law.*
- iv) There shall be no order as to costs in this appeal.*

07.12.2023

Index : Yes / No

GLN

To

The Special District Judge



CMA. Nos.4124/2019 - 3679/2021

WEB COPY

Special District Court
Motor Accident Claims Tribunal-I
Tiruvallur.



WEB COPY



CMA. Nos.4124/2019 - 3679/2021

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY JUDGMENT IN
C.M.A. NO.4124 OF 2019
& 3679 OF 2021**



WEB COPY



CMA. Nos.4124/2019 - 3679/2021

**Pronounced on
07.12.2023**