IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2820 of 2013
and
M.P No.1 of 2013

The Branch Manager,
M/s.Iffco Tokio General Insurance Company Ltd.,
New No.28, North Usman Road
T.Nagar, Chennai-600 017. ... Appellant

..Vs..

1.Kannadasan
2.Vellaiyan . ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 10.02.2012 made in MCOP.No.50 of 2010, on the file of the Motor Accident Claims Tribunal/ Subordinate Judge, Thiruvallur.

For Appellant : Mr.M.B.Gopalan
For Mr.E.Rajadurai

For Respondents : No Appearance

J U D G M E N T

This appeal has been filed by the Insurance Company challenging the award dated 10.02.2012 passed by the Motor Accident Claims Tribunal / Subordinate Judge, Thiruvallur, in MCOP No.50 of 2010.

2. The Appellant Insurance Company has challenged the Award on the following grounds:

a) The Tribunal failed to consider the fact that on the date of accident i.e on 05.01.2009, there was no insurance policy in force and the subject vehicle was insured with the Appellant only subsequent to the accident i.e on 12.01.2009 .

b) The Tribunal has erroneously mulcted the liability on the appellant under the impugned Award and directed the Appellant/Insurance company and the 2nd respondent, who is the owner of the vehicle jointly to pay compensation to the claimant.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	***Award Amount (Rs.)***
Injuries	40,000/-
Pain and suffering	5,000/-
Transport to hospital	3,000/-
Extra Nourishment	1,500/-
Loss of Income	10,000/-
Medical Expenses	14,078/-
Total	**73,578/-**

4. Before the Tribunal, the first respondent/claimant has filed 6 documents which were marked as Ex.P1 to Ex.P6 and examined himself as PW1. On the side of the Appellant, no document was marked. However , one witness was examined namely, the Legal Officer of the Insurance Company official as RW1.

5. The learned counsel for the Appellant would submit that it is settled law that when there is no insurance coverage for the vehicle on the date of accident, the Insurance Company cannot be made liable to pay the

compensation. He drew the attention of this Court to the oral evidence adduced by RW1, the official of the Appellant/ Insurance company. He submitted that the accident happened on 05.01.2009, but the insurance coverage for the subject vehicle is only for the period between 12.01.2009 to 11.01.2010. The said fact was admitted by the claimant himself in column 16 of the claim petition. Therefore, he would contend that the Tribunal has erroneously mulcted the liability on the appellant under the impugned Award and has also erroneously directed the both the appellant/insurance company and the 2nd respondent, who is the owner of the vehicle jointly and severally to pay the award amount to the 1st respondent/claimant.

6. In support of his submissions, the learned counsel for the Appellant/insurance company would rely upon the following authorities:

(a) A decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Sobina Iakai and others reported in (2007) 7 SCC 786.

(b) A decision of a learned Single Judge of this Court dated 27.11.2019 passed in C.M.A.Nos.2319 of 2004 and 661 of 2007.

Relying upon the aforesaid decisions, the learned counsel for the Appellant would submit that the Tribunal ought to have exonerated the Appellant / Insurance Company from any liability since there was no insurance coverage on the date of the accident i.e., on 05.01.2009.

7. Though notice has been served on the the respondents, none appeared on behalf of them.

8. Heard the learned counsel for the appellant/Insurance Company and also perused the materials on record.

9. It is relevant to refer the judgment rendered by the Hon'ble Division Bench of this Court reported in **2004(2) TN MAC 309** which reads as follows:

(i) the officer-in-charge of the police station/investigating officer as soon as any information regarding any accident involving death or bodily injury to any person is recorded, shall forward a copy of the report/complain within 30 days from the date of recording of the information to the Claims Tribunal having jurisdiction, and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within 30 days of receipt of such report, forward the same to such Claims Tribunal having jurisdiction and insurer.

(ii) It is the duty of the registering authority or the officer-in-charge of a police station, on request by a person who is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, to furnish all the particulars of the vehicle, name and address of the persons who were using the vehicle at the time of the accident, details of the property damaged.

(iii) It is the duty of the police officer-in-charge of investigation to gather full particulars of the insurance certificate in respect of the motor vehicle involved in the accident and furnish them to the injured or to the legal representative of the deceased. If any fee has been prescribed, the same has to be paid by the party concerned.

(iv) The officer investigating the accident after a case is registered, shall forward copies of first information report relating to the accident to the Claims Tribunal having jurisdiction, president of the District Committee for Legal Aid and Advice. The officer of the Transport Department inspecting the vehicle (MVI) involved in an accident shall also furnish immediately the information, i.e., the name and address of the owner of the vehicle, name of the driver and/or conductor, registration number of the vehicle, particulars of permits, if any, in respect of the vehicle, with validity, date of expiry of fitness certificate, and date of expiry of the insurance to the Insurance Company with which the vehicle is insured.

(v) The claimants are duty bound to furnish correct registration number of the vehicle, full insurance particulars as furnished by the police officer/investigation officer. If details are wanting at the time of filing off the claim petition, it is the duty of the claimants to ascertain all those particulars either from the police officer/investigation officer or from the Motor Vehicle Inspector of the Transport Department or from the Tribunal having jurisdiction and mention those particulars in the claim petition.

(vi) If the insurance company feels that the particulars furnished in the claim petition are not correct or not sufficient, it shall ascertain the necessary details from the police officer/investigation officer concerned or from the officer of the Motor Vehicle Inspector, and prove its case by positive evidence.

As seen from Direction No.V issued by the Division Bench of this Court, it is clear that the claimant is duty bound to furnish the correct Registration Number of the vehicle and full insurance particulars.

10. In the case on hand, admittedly the claimant in his claim petition as found in column – 16 have disclosed only the name of the Insurance Company but have not disclosed the full insurance particulars like policy number, period of insurance etc. The claimant has also not adduced any evidence before the Tribunal with regard to the steps he had taken to obtain the full insurance particulars of the subject vehicle which was involved in the accident. It has also been the consistent stand of the Appellant / Insurance Company before the Tribunal as seen from their counter statement as well as from their oral and documentary evidence that the subject vehicle did not have insurance coverage on the date of the accident i.e., on 05.01.2009 and the insurance policy was issued only subsequently which gives coverage to the subject vehicle only for the period from 12.01.2009 to 11.01.2010 i.e., after the accident. The evidence adduced by RW1, an official of the Appellant / Insurance Company also supports the contention of the Appellant / Insurance Company and there is no contradiction whatsoever. For the foregoing reasons, the Division Bench judgment of the Madras High Court reported in **2004 (2) TN MAC 309** (DB) supports the contention of the Appellant / Insurance Company.

11. As rightly contended by the learned counsel for the Appellant, it is settled law as laid down by the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited** vs. **Sobina Iakai and others** reported in **(2007) 7SCC 786** which is followed by a decision of the learned Single Judge of this Court dated 27.11.2019 passed in CMA. Nos.2319 of 2004 and 661 of 2007 that when there is no insurance coverage on the date of the accident, the Appellant cannot be made liable to compensate the claim.

12. This Court has also perused and examined the impugned Award as well as the evidence placed by the respective parties before the Tribunal. The Appellant / Insurance Company has conclusively established before the Tribunal that on the date of the accident, i.e., on 05.01.2009, there was no insurance coverage for the subject vehicle which was involved in the accident. Though they have not produced the insurance policy, in column 16 of the claim petition itself it was mentioned that the insurance coverage for the vehicle is only for the period from 12.01.2009 to 11.01.2010 i.e., the period subsequent to the date of the accident. The Tribunal under the

impugned Award by total non-application of mind and without assigning any reason has mulcted the liability on the Appellant / Insurance Company who are not at all liable to compensate the claim, since there was no insurance coverage on the date of the accident.

Conclusion:

13. For the foregoing reasons, the impugned Award dated 10.02.2012, passed in MCOP.No.50 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Thiruvallur against the Appellant is hereby set aside and this appeal is allowed. However, it is made clear that the Award passed against the 2nd respondent, the owner of the subject vehicle by the Tribunal is confirmed.

14. In the result, the 2nd respondent who is the owner of the subject vehicle is directed to deposit the compensation awarded by the Tribunal along with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and cost, after deducting the amount already deposited if

any to the credit of MCOP.No.50 of 2010, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount along with accrued interest lying to the credit of MCOP.No.50 of 2010 to the bank account of the claimant/1st respondent through RTGS within a period of two weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

06.04.2023

Index:Yes/No
Speaking/Non-speaking order
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To

1.The Subordinate Judge
Thiruvallur.

2.The Section Officer
V.R.Section, High Court of Madras.

A.A.NAKKIRAN, J.

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