IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.04.2023

PRONOUNCED ON : 02 .06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.Nos.3762 and 3763 of 2013
and MP.No.1 of 2013

The Divisional Manager,
The New India Assurance Co., Ltd.,
42, Big Street, Tiruvannamalai. ...Appellant in both the CMAs

Vs.

1.Kanagaraj ...1st Respondent in CMA.No.3762/2013
1.Victoria @ Victoria Maharani ....1st Respondent in CMA.No.3763/2013

2.R.Panneerselvam ...2nd Respondent in both the CMAs

Praye r:- Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MCOP.Nos.759 & 760 of 2007 dated 06.02.2012 on the file of Motor Accident Claims Tribunal (Principal Subordinate) Tiruvannamalai.

For Appellants in both CMAs :Mr.M.Krishnamoorty

For Respondents in both CMAs :Mr.B.Jawahar for R1
No appearance for R2

COMMON JUDGEMENT

These Civil Miscellaneous Appeals have been preferred by the appellant-Insurance Company questioning the correctness of the award dated made in MCOP.Nos.759 & 760 of 2007 respectively on the file of Motor Accident Claims Tribunal, (Principal Subordinate) Tiruvannamalai.

2. These appeals arise out of common award passed by the Tribunal in relation to the same accident. The learned counsel for the parties advanced common argument in these appeals and therefore, they are disposed of by this common judgment.

3. These claim petitions namely MCOP.Nos.759 & 760 of 2007 have been filed by the respective claimants stating that on 27.08.2007 at 4.30 p.m., while the claimants were returning from Malappambadi Village to Tiruvannamalai in the TVS Scooty bearing Regn.No.25-F-6616 along with his wife near Kilnachipattu bus stop, the second respondent's driver drove his vehicle bearing Regn.No.TN-31-L-7879 in a rash and negligent manner and dashed against the vehicle and they claimants sustained injuries

all over the body. Claiming compensation of Rs.5,00,000/- and Rs.2,00,000/- as compensation respectively, the claimants have filed claim petitions before the Tribunal.

4. The Tribunal, on appreciation of both oral and documentary evidences, awarded a sum of Rs.1,45,065 and Rs.1,10,700/- respectively in favour of the claimants. After awarding the compensation amount, the Tribunal has directed the appellant/Insurance Company to pay the compensation amount.

5. Before the trial Court, on the side of the appellants, three witnesses were examined as P.W.1 to P.W.3 and filed seventeen documents and they were marked as Ex.P1 to Ex.P17. On behalf of the respondents in the claim petition, two witnesses were examined as RW1 and RW2 and six documents were filed and they were marked as Ex.R1 to Ex.R6.

6. The learned counsel for the appellants mainly questioned that the award passed by the Tribunal is erroneous and it is liable to be set aside.

According to the learned counsel, the judgment and decree of the Tribunal is contrary to law, weight of evidence and probabilities of the case. It ought to have exonerated the appellant and fastened the liability only on the second respondent/owner of the car as the policy was cancelled in view of the dishonour of the cheque issued towards payment of premium. Without properly appreciating the oral and documentary evidences adduced by the appellant that would prove that the cheque dated 15.11.2006 issued towards the payment of premium for the insurance of the second respondent's car bearing Regn.No.TN-31-L-7879 was involved in the impugned accident from the period 15.11.2006 to 14.11.2007 and was returned by the banker due to insufficiency of funds, the policy was cancelled and the same was intimated by the received letter dated 20.11.2006 and acknowledged by the second respondent on 24.11.2006 whereas the impugned accident occurred on 27.08.2007. Since the policy was cancelled (due to dishonour of the cheque issued towards premium for the insurance policy) well before the date of accident and there was no existing policy to fasten the liability on the appellant. It has also erred in relying upon the authorities that are not applicable to the facts and circumstances of the case. In any event, the

Tribunal erred in not granting the relief of recovery from the owner of the vehicle.

7. In support of his contention, the learned counsel for the appellant has relied on the following decisions:

(i) In 2016(2) TN MAC 520 (SC), it has been held in paragraph No.6 as follows:

> *"6. Learned Counsel appearing for the Appellant/Insurance Company submits that on the date of the alleged incident, the vehicle in question did not have the valid Insurance Policy. To buttress his argument, the learned Counsel brings to our notice the date of the Policy lapsed the date of intimation of dishonour of the cheque and the cancellation l ll letter wrtten to the insured/Owner. But this aspect of the matter has not been taken note either by the Tribuan or by the High Court while passing the impugned Judgments)s) and Order(s)."*

(ii) In 2012 (1) TNMAC 481 (SC), *United India Insurance Co.,Ltd., Vs. Laxmamma & Others,* it has been held as follows:

> *19. ....In other words, where the Policy of Insurance is issued by an authorized Insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such Insurance Company cancels the Policy of Insurance and sends intimation thereof to the owner, the Insurance Company's liability to indemnify the third parties which that Policy covered ceases and the Insurance Company is not liable to satisfy awards of compensation in respect thereof.*

8. The learned counsel for the respondents has submitted that the Insurance Company has not sent intimation in respect of dishonour of cheque to the RTO Office. In such circumstances, they are liable to pay the entire compensation. To substantiate his contention, the learned counsel for the respondents has relied on the following citations:

a) In *2008(2) TM,AC 209 (DB) (JHAR),- Oriental Insurance Company Limited, Vs. Neelu Devi and Others*, it has been held as follows:

> *12. After return of the cheque unpaid in the aforesaid situation, what the appellant-Insurance Company was required to do was to immediately inform the owner*

(insured) of the vehicle who had issued the cheque acknowledgement due and also to the Transport Authority/Registering Authority by whom the permit/token used to be issued for plying of the vehicle in question. Admittedly, none of the provisions of the Motor Vehicles Act, 1988 had overriding effect over Section 64(v)B of the Insurance Act which deals with the covered under insurance policy ad it speaks

"(1) No Insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be pres, is made in advance in the prescribed manner. "

b) In India Motor Tariff, GR.24. Cancellation of Insurance and Double Insurance in (d) it is stated as follows:

(d) Insurer should inform the Regional Transport Authority (RTA) concerned by recorded delivery about such cancellation of insurance.

9. On perusing the materials, it is seen that the Insurance Company has not sent any intimation with regard to the dishonour of the cheque to the RTO Office. In the absence of any evidence, they are liable to pay the entire compensation fastened on them.

10. The Tribunal has rightly awarded a sum of Rs.1,45,065/- and Rs.1,10,700/- respectively as compensation amount payable by the appellant/Insurance Company.

11. In view of the foregoing discussions, these Civil Miscellaneous Appeals are dismissed and the compensation awarded by the Tribunal at Rs.1,45,065/- and Rs.1,10,700/- to the claimants together with interest and costs are hereby confirmed. The appellant-Insurance Company is directed to deposit the compensation amount as ordered by the Tribunal along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of

MCOP.Nos.759 & 760 of 2007 on the file of the Motor Accident Claims Tribunal, (Principal Subordinate) Tiruvannamalai. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank accounts of the claimants through RTGS within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

02 .06.2023

Index : Yes / No
Internet : Yes/ No
gv

To

1.The Motor Accident Claims Tribunal,
(Principal Subordinate)
Tiruvannamalai
2.The Section Officer,
V.R.Section,
High Court Madras,
Chennai.

A.A.NAKKIRAN. J.,

gv

Pre-Delivery Judgements in

CMA.Nos.3762 and 3763 of 2013
and MP.No.1 of 2013

02 .06.2023