IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.03.2023
Pronounced on	06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No.1516 of 2021
and C.M.P.No.7960 of 2021

The National Insurance Company Ltd.,
Office at Matha Complex,
C.N.A.Road, Vaniambadi
Vellore District-635 751 …Appellant

Vs.

1.D.Kothai Nayaki
2.Minor D.Ramya Sri,
3.Minor D.Yuva Sri
4.Minor. D.Haritha Sri
(Minor respondents 2 to 4 rep by their
mother the 1st claimant)
5.J.Murali

…Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the award dated 09.12.2020 made in M.C.O.P.No.117 of 2018 on the file of the Motor Accidents Claims Tribunal, (II Additional District Judge), Vellore @ Ranipet.

For Appellant : Mr.D.Bhaskaran
For R1 to R4 : Mr.Ma.Pa.Thangavel
for Mr.M.Lokesh
For R5 : Mr. N.Saravanan
for M/s.Arul Selvam Associates

JUDGMENT

(Judgment of the Court was delivered by
K.GOVINDARAJAN THILAKAVADI,J.)

The appellant/Insurance Company has before Motor Claims Tribunal (II Additional District Judge),Vellore @ Ranipet, in M.C.O.P.No.117 of 2018 dated 09.12.2020 is the appellant in this Civil Miscellaneous Appeal.

2.Aggrieved by the quantum of compensation awarded by the Tribunal, the

Insurance Company has brought forth the above said Civil Miscellaneous Appeal. C.M.A.No.1516 of 2021 is directed against the award dated 09.12.2020 passed by the Motor Accident Claims Tribunal in M.C.O.P.No.117 of 2018 directing the appellant/Insurance Company liable to pay a compensation of Rs.24,20,000/- with interest at the rate of 7.5% per annum from the date of filing the petition till the date of realization and costs for the death of one N.Dilli Rajan in an accident alleged to have been taken place on 26.05.2018.

3. The claimants preferred a claim on the file of the Motor Accident Claims Tribunal (II Additional District Judge),Vellore @ Ranipet, in M.C.O.P.No.117 of 2018 praying for an award against the appellant/Insurance Company for the death of N.Dilli Rajan who met with an accident on 26.05.2018 at about 2.30 p.m., the deceased N.Dill Rajan was travelling as owner of the goods and one Naveenkumar was driving the Ashok Leyland Dost LMV bearing Registration No.TN 25 AX 2486 owned by the 5th respondent owner of the lorry from Melvallam after loading the Banana which belongs to the deceased Dilli Rajan to deliver the goods at Chennai and when they came on Bangalore to Chennai Highways and near Kaveripakkam Raamapuram, Thirumal's Saw Mill, the right backside tyre of

Ashok Leyland DOST suddenly bursted and the vehicle was capsized. Due to the accident, the deceased had sustained severe blood injuries. Immediately after the accident, the injured Dilli Rajan was taken to G.H. Walajahpet, where he succumbed to his injuries. A Criminal Case was registered against the driver of Ashok Leyland Dost bearing Registration No.TN 25 AX 2486 by Kaveripakkam P.S. In Cr.No.223/2018 under Section 279 and 302(A) of IPC. The accident occurred only due to the rash and negligent act of the driver of Ashok Leyland Dost. The said vehicle was duly insured with the appellant/Insurance Company on the date of accident.

4.Based on the above said contentions the claimants assessed the damages at Rs.25,00,000/- and prayed for an award against the appellants directing them to pay jointly and severally the above said sum with future interest and from the date of claim and till realization with cost. In order to prove the case of the petitioners, PW1 & PW2 were examined and Ex.P1 to P9 was marked on the side of the petitioners. On the side of the respondents RW1 was examined and Ex.R1 to Ex.R5 were marked.

5.The appellant/Insurance Company filed a counter statement, resisting the claim of the respondents/claimants denying that the vehicle bearing registration No. TN-25-AX-2486 was validly insured with this respondent at the time of the accident and also that the first respondent driver had an effective and valid license. It was further contended that that the accident did not take place as narrated by the respondents/ claimants and that the quantum of compensation claimed is exorbitant hence the claim should be dismissed with costs.

6. After the completion of recording of evidence adduced on both sides, the Tribunal heard the arguments advanced on either sides, framed the necessary points for consideration regarding the negligence and quantum, scrutinized the records and appreciated the evidence, held that the rash and negligent driving of the driver of the 5th respondent vehicle which was duly insured by the appellant/Insurance company was the sole cause of the accident and passed an award directing the appellant/Insurance Company to pay the said amount initially to the claimants and to recover the same from the 5th respondent/owner of the

vehicle without initiating any separate proceedings, along with an interest at the rate of 7.5% per annum from the date of filing the petition till the date of realization. Aggrieved by this, the appellant/Insurance Company preferred the above appeal questioning the liability of the appellant/Insurance Company.

7.The learned counsel appearing for the appellant/Insurance Company would vehemently contend that the claims Tribunal failed to take note of the fact that the cheque issued by the 5th respondent/owner of the vehicle towards premium was dishonoured and the policy stands cancelled from the inception and the same was duly intimated to the owner of the vehicle, which is evident from the evidence of R.W.1 and Exhibits R1 to R5 respectively. It is further submitted that the owner of the vehicle remained ex-parte. While so, the claims Tribunal erroneously concluded that cancellation of policy was not duly intimated to the owner without appreciating the oral and documentary evidence adduced on the side of the appellant/Insurance Company. Hence, prayed that, the award of the claims Tribunal fixing the liability on the appellant/Insurance Company to pay the compensation to the claimants is liable to set aside. To support his contention, the learned counsel relied upon the judgment reported in the following cases

1. ***2008 2 Supreme Court Cases 595***
2. ***2016(2) TN MAC 520 (SC)***
3. ***2018 (2) TN MAC 731 (DB)***
4. ***(2012) 5 Supreme Court Cases 234***

8.Per contra, the learned counsel appearing for the respondents/claimants would submit that the claim of third party cannot be defeated for the fault of insurer or owner. The Tribunal considering the same passed the order of pay and recovery which calls for no interference and prays to dismiss the appeal.

9.The factum of negligence on the part of the 5th respondent/driver and the quantum awarded by the Tribunal is not in dispute. The challenge to the judgment of the Tribunal is made only on the ground of liability. The Tribunal has awarded the compensation but fastened the liability on the appellant/Insurance Company. According to the learned counsel for the appellant/Insurance Company the cheque issued by the owner of the vehicle (5th respondent) towards premium for policy of insurance was dishonoured and the same was intimated to the owner and also to the RTO office through registered post. This fact was spoken by R.W.1, the Officer of the appellant Company. Through R.W.1 EX.R1 to R.5 marked. Ex.R.1 is the cheque dated 13.06.2017 issued by the 5th respondent. Ex.R.2 is the cheque returns memo dated 22.06.2017 issued by the Kotak Mahendira Bank. Ex.R.3 is the policy Cancellation Memo. Ex.R4 is the copy of notice sent by the appellant/Insurance company to the owner of a vehicle 5th respondent. Ex.R5 is the copy of notice sent by the appellant/Insurance Companyt to the RTO, Vellore.

10.The learned counsels appearing for the respondents would vehemently argue that Ex.R.4 notice was not sent to the owner of the vehicle, the 5th respondent herein. The date in Ex.R4 is mentioned as 14.06.2017. Whereas, as per Ex.R.3, the policy was cancelled on 14.06.2017. This would clearly prove that Ex.R4 notice was fabricated for the purpose of the case. The above contention of the respondent was refuted by the learned counsel for the appellant stating that the date in Ex.R.4 was wrongly typed and in the absence of any concrete evidence on the side of the respondents that the 5th respondent/owner of the vehicle, the intimation of cancellation of policy was not duly served on him, the arguments put-forth by the respondents cannot be taken into consideration. Though, the owner of the vehicle remained ex-parte in the trial Court, he made appearance in the appeal. However, he had neither filed a petition to set aside the ex-parte order passed against him nor produced any additional evidence to establish the fact that the cancellation intimation was not duely served on him. The respondents failed to disprove the signature found in the acknowledgment card that the same do not belong to the 5th respondent/owner of the vehicle. The decision cases referred by the respondents are not applicable to the facts and circumstances of the present case. In the referred case, ***A.Banu Prakash vs. Thimma Setty and others***, the driver of the vehicle was not holding a valid driving license. Hence, pay and recover was ordered. In another referred case reported in ***2015 (1) TN MAC 179 (DB),*** considering the claimants as third party, cannot be made to suffer, the insurer was directed to pay and recover. However, the Hon'ble Supreme Court in various judgments has held that when a policy was cancelled on account of dishonour of cheque after due intimation of dishonour to owner, the insurer is not liable to pay the compensation. [Ref. (***2008) 2 Supreme Court Cases 595, 2016 (2) TN MAC 520 (SC), 2018(2) TN MAC 731 (DB)***]. Hence, in the light of the above decision, which is squarely applicable to the present case, the insurer cannot be made liable to pay the award amount to the claimants and thereafter recover it from the owner of the vehicle.

11.The learned counsel appearing for the appellant/Insurance Company submits that on the date of the alleged accident, 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 letter written to the owner/5th respondent herein. But this aspect of the matter has not been taken note by the Tribunal while passing the impugned order.

12.We have carefully perused the documents furnished by the learned counsel for the appellant/Insurance Company. From these documents it is clear that the cancellation of policy was duly intimated to the owner through Ex.R4-letter. The signature found in the acknowledgment card would prove that the 5th respondent/owner of the vehicle has duly received the intimation. In view of the fact that the signature in the acknowledgment card has not been disproved by the owner of the vehicle, the Tribunal has committed an error in coming to the conclusion that the cancellation of policy was not duly intimated to the 5th respondent/owner of the vehicle. While so, the vehicle in question did not have the valid insurance policy on the date of accident. Therefore, the Tribunal is not right in directing insurer to pay and recover. Mere difficulty in realizing award amount from owner of vehicle cannot imple Court to do something against provisions of Statues and Apex Court dictum [Ref : ***2018(2) TN MAC 731 (DB)***]. The entire liability goes to the owner of the vehicle. Accordingly, the appellant/Insurance Company is absolved from the liability, the 5th respondent/owner of the vehicle is liable to pay the entire compensation to the respondents/claimants.

13.Thus the 5th respondent/owner of the offending vehicle is directed to deposit the entire award amount with interest at the rate of 7.5% per annum to the credit of M.,C.O.P.No.117 of 2018 on the file of MACT, (II Additional District Judge), Vellore @ Ranipet, within a period of 12 weeks from the date of receipt of copy of this judgment and on such deposit being made, the respondent 1/1st claimant is permitted to withdraw her share amount as per the apportionment granted by the Tribunal in its award, by filing an appropriate application. As far as the minors 2 to 4 shares are concerned, the same is to be deposited in any of the nationalized bank under interest bearing deposit schemes till the minor attains the age of majority and the same should be renewed periodically.

14.In view of the fact that the Tribunal has not appreciated the documents in a right perspective, this Court is inclined to consider the grounds raised in the appeal. Accordingly, the judgement and decree dated 09.12.2020 passed in M.C.O.P.No.117 of 2018 on the file of the Motor Accidents Claims Tribunal, (II Additional District Judge), Vellore @ Ranipet, stands modified to the extent indicated supra and Consequently, this Civil miscellaneous appeal is allowed on the above terms. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.,J.) **(K.G.T.,J.)**

06.04.2023

vsn

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

To:-
The Motor Accident Claims Tribunal,
II Additional District Judge), Vellore @ Ranipet.

D.KRISHNAKUMAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

vsn

Pre-delivery judgment made in

C.M.A.No.1516 of 2021
and C.M.P.No.7960 of 2021

06.04.2023