IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.735 of 2018 and
C.M.P. No.7039 of 2018

The Oriental Insurance Company Limited
Represented by its Manager,
S.V. Complex,
II Floor, No.1/9, Easwaran Koil Street,
Puducherry, Puducherry State. ... Appellant

Vs.

1. Gandhimathi

2. Chandrasekaran

3. Sasikala

4. Lakshmi

5. Madhu ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 28.10.2017 made in MCOP No.88 of 2014, on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Mayiladuthurai.

For Appellant : Mr.K.Vinod

For Respondents : R5-Substituted Service,
(Paper Publication filed) No Appearance
Mr.B.Jawahar for R1 to R4

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the Judgment and Decree dated 28.10.2017 made in MCOP No.88 of 2014, on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Mayiladuthurai.

2. The respondents 1 to 4 are the claimants. The 5th respondent and the appellant herein are the owner and insurer of the offending vehicle namely Ashok Layland Bus bearing Regn. No.PY-01-PA-9699.

3. The case of the claimants is that on 15.02.2014 at about 1.30 p.m., after shopping at Puthur, the deceased Mayakrishnan was returning on the Sirkazhi-Kollidam Main Road from north to south. While he was crossing the road carefully from Puthur Mathakadi, an Ashok Leyland Bus bearing Regn. No.PY-01-BA-9699, which was driven by its driver in a rash and negligent manner from Chidambaram to Sirkazhi, dashed against the deceased Mayakrishnan due to which, he sustained grievous head injury. Immediately, he was taken to Sirkazhi Government Hospital where he was

given first aid. Thereafter, he was given treatment at Chidambram Medical College and Hospital and then at Jipmer Government Medical College and Hospital and thereafter at Puducherry Bewell Hospital. However, he died without responding to the treatment. A case was registered by the Aanaikkaran Chathiram Police against the driver of the said bus.

4. The claimants who are the legal heirs of the deceased filed a claim petition in in MCOP No.88 of 2014, on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Mayiladuthurai, against the owner and insurer of the offending vehicle, claiming compensation of Rs.15,00,000/- for the death of the deceased Mayakrishnan.

5. In order to substantiate the claim before the Tribunal, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 11 documents were marked as Ex.P.1 to Ex.P.11. On the side of the 2nd respondent, one witness was examined as R.W.1 and 2 documents were marked as Ex.R.1 and Ex.R2.

6. The Tribunal, after hearing both sides and considering the materials, awarded compensation of Rs.5,85,330/- with cost and interest at 7.5% from the date of petition i.e. 20.03.2014 till the date of deposit and directed the appellant herein/2nd respondent who is the insurer of the offending vehicle to pay the compensation to the claimants and then to take legal action against the 5th respondent herein/1st respondent who is the owner of the offending vehicle.

7. Aggrieved by the said Award passed by the Tribunal, the Insurance Company has filed the present appeal questioning the liability.

8. The learned counsel for the appellant/Insurance Company submitted that on the date of accident i.e. on 15.02.2014, no insurance policy was in force for the offending vehicle. Though the 5th respondent herein who is the owner of the offending vehicle had taken insurance policy from the appellant/Insurance Company, he had issued only cheque on 07.02.2014 towards premium and the said cheque was presented for collection on 08.02.2014. However, they received an intimation on 20.02.2014 that the said cheque was dishonored for want of sufficient fund. Subsequently, the policy

was canceled. Since the cheque paid toward premium was dishonored and without any premium, there cannot be a valid policy. When there was no valid policy and no insured and insurer relationship between the owner and the Insurance Company, no contractual application would arise. Since there was no valid policy at the time of accident, the appellant/Insurance Company is not liable to pay any compensation and only the owner is liable to pay the compensation. The Tribunal failed to consider the same warrants interference.

9. The learned counsel for the respondents 1 to 4/claimants submitted that the appellant/Insurance Company has issued the policy to the 5th respondent on 07.02.2014 itself only based on the cheque given by the 5th respondent and not on ready cash and the accident had taken place on 15.02.2014. Only thereafter i.e. on 20.02.2014, the intimation regarding dishonouring of cheque was received by the Insurance Company. Therefore, between 07.02.2014 to 20.02.2014, there was a valid policy. Further, the claimants are not the owners of the vehicle and the claim is not based on the Act policy. The claim is made only by 3rd party. Therefore, what ever the contractual application, that is between the insurer and insured and the third party is not aware of the same.

10. Though substituted service was taken through paper publication, on the 5th respondent who is the owner of the offending vehicle and name printed, non appeared on behalf of the 5th respondent.

11. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 4.

12. A perusal of the entire materials shows that the date of accident is on 15.02.2014. Policy was taken on 07.02.2014 and therefore, on the date of accident, the offending vehicle was insured with the appellant/Insurance Company and there was a valid policy. The appellant/Insurance Company is not in a position to prove that the policy was subsequently cancelled prior to the date of accident due to the dishonour of cheque. Since on the date of accident, there was a valid policy, the appellant/Insurance Company as the insurer of the offending vehicle, has to indemnify the loss caused by the insured and the third party is not concerned about the contractual application between the insured and the insurer. Hence, the appellant/Insurance Company is liable to pay the compensation to the

claimants. The Tribunal, considering the facts and materials rightly directed the appellant/Insurance Company to pay the compensation to the claimants and given liberty to the appellant/Insurance Company to take legal action against the 5th respondent herein/1st respondent who is the owner of the offending vehicle thereafter. This Court does not find any perversity in the appreciation of evidence and the findings of the Tribunal. Under these circumstance this Court does not find any reason to interfere.

13. As far as quantum is concerned, the appellant/Insurance Company only denied the liability and there is no dispute with regard to the quantum of compensation.

14. Since the Tribunal has already given the liberty to the appellant/Insurance Company to take legal action against the 5th respondent herein/1st respondent who is the owner of the offending vehicle, it is for the appellant/Insurance Company to realize the said award amount from the owner of the vehicle.

15. Though the learned counsel for the appellant/Insurance Company submitted that they have already deposited part of the Award amount, the appellant/Insurance Company is directed to deposit the balance award amount if already not deposited, within a period of six weeks from the date of receipt of copy of this order. On such deposit, the Tribunal is directed to disburse the amount to the claimants without any delay in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others), since the accident is of the year 2014 and the claimants are struggling since then.

16. With the above observations, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeal.

22.09.2023

ksa-2
Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1.The Motor Accident Claims Tribunal
(Additional Sub Court), Mayiladuthurai.

2.The Section Officer,
VR Section,
High Court,
Madras.

P.VELMURUGAN. J.

ksa-2

C.M.A. No.735 of 2018

22.09.2023