IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal Nos. 585 & 588 of 2022
and
C.M.P. Nos. 4247 & 4253 of 2022

The Branch Manager,
Cholamandalam MS General
Insurance Company Ltd.,
Branch Office, Krishnagiri. ... Appellant in both the appeals

Versus

1.Kaveri

2.Yebinesar @ Yebinsh

3.Minor Emimal

4.Minor Esgel @ Ezekiel

5.Bali @ Balammal

6.V.Duraisamy

(Minors 3 & 4 represented by mother & NF
1st respondent) ... Respondents in C.M.A. No. 585 of 2022

1.Kannayiram

2.V.Duraisamy … Respondents in C.M.A. No. 588 of 2022

COMMON PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 04.02.2021 made in M.C.O.P. Nos. 1020 & 1021 of 2018 on the file of the Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : M/s. M.B. Gopalan Associates (in both)

For Respondents : Mr. M.A. Gouthaman for R1 to R5 in C.M.A. No. 585 of 2022 and for R1 in C.M.A. No. 588 of 2022 (in both)

No appearance for R6 in C.M.A. No. 585 of 2022 and for R2 in C.M.A. No. 588 of 2022 (in both)

COMMON JUDGMENT

These appeals have been filed by the appellant challenging the awards passed by the Tribunal in M.C.O.P. Nos. 1020 & 1021 of 2018 dated 04.02.2021.

2.The respondents 1 to 5 in C.M.A. No. 585 of 2022 and the first respondent in C.M.A. No. 588 of 2022 have filed two claim petitions stating that on 10.06.2017 at about 3.30 p.m., when the deceased was riding in his TVS Sport (two wheeler) bearing Registration No. TN 24 K 3531 along with the first respondent in C.M.A. No. 588 of 2022 as a pillion rider from Kaveripattinam to Krishnagiri NH road, near Mottu junction road, a force Kargo pick up vehicle (four wheeler) bearing Registration No. TN 24 A 5944 driven by its driver in a rash and negligent manner turned right side all of a sudden near Mottur junction and hit the two wheeler as a result of which the deceased and the pillion rider sustained severe injuries and was admitted in hospital and inspite of treatment, the rider of the motorcycle died. Thus, the respondents 1 to 5 in C.M.A. No. 585 of 2022 and the first respondent in C.M.A. No. 588 of 2022 have filed claim petitions seeking compensation.

3. The sixth respondent in C.M.A. No. 585 of 2022 / the second respondent in C.M.A. No. 588 of 2022 (hereinafter referred to as 'the insured') has filed separate counters in the claim petitions stating that the claim petitions are not maintainable either in law or on facts; that on 10.06.2017 at 03.30 p.m., the deceased had driven the two wheeler in a rash and negligent manner along with a pillion rider, without any signal and at an uncontrollable speed, had applied sudden break; that due to the imbalance, the two wheeler came in the center median and at the time, his vehicle was dashed on the back side of the cargo pick up van as such the accident had occurred due to the negligence of the deceased; and that in order to get compensation, the complaint was falsely foisted; that it is further submitted that he has paid insurance premium on 10.06.2017 to the appellant and the vehicle was inspected by the officers and hence, the

appellant has to compensate and prayed for dismissal as against him.

4.The appellant in both the appeals had filed separate counters in both the claim petitions stating that the vehicle involved in the accident has not been insured with them on the date of accident i.e., on 10.06.2017; that the period of policy was from 11.06.2017 to 10.06.2018; that the motorcyclist without noticing the four wheeler belonging to the first respondent moving on the highway came out from the side road and hit against the four wheeler; that on investigation it was found that the insured has driven the vehicle without driving license; and that the FC has expired and there was no insurance and there was no valid records; and that the award may be passed against the insured alone; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petitions.

5.The respondents 1 to 5 in C.M.A. No. 585 of 2022 and the first respondent in C.M.A. No. 588 of 2022 examined one witness as PW1 on their side and marked Ex.P.1 to Ex.P.18. On the side of the appellant, RW1 to RW3 have been examined and Ex.R.1 to Ex.R.4 were marked.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the negligence of the driver of the four wheeler belonging to the insured and directed the appellant to pay a sum of Rs.20,44,400/- as compensation to the respondents 1 to 5 in C.M.A. No. 585 of 2022 and a sum of Rs.6,25,000/- to the first respondent in C.M.A. No. 588 of 2022 and granted liberty to recover the same from the insured. Aggrieved by the said award, the appellant has preferred the instant appeals.

7.Mr. M.B. Gopalan, learned counsel for the appellant in both the appeals submitted that the accident took place on 10.06.2017 at about 03.30 p.m. The premium was paid by the insured herein at 07.12 p.m., on the same day and the insurance coverage was from 0.00 hours on 11.06.2017 till 10.06.2018. The Tribunal had recorded these facts in the award. However, had erroneously held that the appellant was liable to pay compensation and thereafter recover it from the insured. The Tribunal had also accepted the evidence let in on the side of the appellant to prove that there was no coverage at the time of the accident. The learned counsel relied upon the Judgment of the Honourable Supreme

Court in ***National Insurance Co.Ltd., Vs. Sobina Iakai and Ors.*** reported in ***2007 (5) CTC 892*** in support of his submission that the policy represents the contract; and that the date and time mentioned in the insurance policy should be reckoned as the period of coverage. The learned counsel further took this Court through the evidence of RW1, the officer of the appellant company and RW2, the insured herein. The learned counsel therefore submitted that the direction to pay and recover is unwarranted in the facts and circumstances of the case.

8.Mr. M.A. Gouthaman, learned counsel for the respondents 1 to 5 in C.M.A. No. 585 of 2022 and the first respondent in C.M.A. No. 588 of 2022 / the claimants, per contra, submitted that the insured, examined as RW2 had stated that the premium was paid at 10.30 p.m., on 10.06.2017. It is his definite case that the appellant / insurance company had delayed the issuance of the policy after receipt of premium. It is also their case that a cover note was issued on 10.06.2017. The learned counsel therefore submitted that in the light of the evidence of RW1, RW2 and other evidence adduced on either side, the Tribunal was right in directing the appellant / insurance company to pay and recover the compensation amount from the insured herein. The learned counsel relied upon the Judgment of the Honourable Supreme Court in First Appeal from Order No. ***394 of 1998*** in ***The Oriental Insurance co. Vs. Mithlesh & Others*** dated ***18.09.2017*** in support of his submissions.

9.Though the insured was served in both the appeals and the learned counsel had entered appearance, there is no representation today.

10.The only question involved in the instant appeals is whether the Tribunal was right in directing the appellant company to pay and recover the compensation from the insured.

11.On perusal of the records, this Court finds that the accident took place at 03.30 p.m., on 10.06.2017. The FIR was registered at 10 p.m., on the same day. Ex.P.7, the proposal signed by the insured shows that the premium was paid on 10.06.2017 at about 19.12 hours. Ex.P.8, insurance policy issued by the appellant shows that the coverage was from 11.06.2017 at 0.00 hours to 10.06.2018. There is no dispute with regard to the above facts. However, it was the case of the insured before the Tribunal that he had paid the premium at10.30 a.m., on 10.06.2017 and cover note was issued by the appellant. This Court finds that when the insured had taken a stand which is contrary to the document, the burden is on him to establish his case. However, he has not done so. Further he had also not produced the cover note as claimed by him. The Tribunal had recorded these facts. However, under the premise that substantial justice has to be done, the Tribunal had directed the appellant to pay and recover the money from the insured.

12.From the above facts, it is seen that it is not the case of breach of any policy condition. It is a case of no policy coverage at the time of accident which has been established by the appellant through the evidence referred above. In this regard, it would be useful to refer to the observation of the Hon'ble Supreme Court in ***National Insurance Co.Ltd., Vs. Sobina Iakai's case (cited supra),*** which is extracted below;

> *"19.In order to curb this widespread mischief of getting Insurance Policies after the accidents, it is absolutely imperative to clearly hold that the effectiveness of the Insurance Policy would start from the time and date specifically incorporated in the*

Policy and not from an earlier point of time".

Therefore, this Court is of the view that the appellant / insurance company has to be exonerated totally.

13. In the result, both the Civil Miscellaneous Appeals are allowed and the insured who is the sixth respondent in C.M.A. No. 585 of 2022 and the second respondent in C.M.A. No. 588 of 2022 is directed to deposit the entire award amount determined by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the respondents 1, 2 and 5 in C.M.A. No. 585 of 2022 and the first respondent in C.M.A. No. 588 of 2022 are directed to withdraw their respective shares along with proportionate interest and costs, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn. The shares of the minor respondents 3 and 4 in C.M.A. No. 585 of 2022 are directed to be deposited in the interest bearing Fixed Deposit in any of the nationalized

bank till they attain majority and the first respondent in C.M.A. No. 585 of 2022 is permitted to withdraw the accrued once in three months. If the insured does not deposit the compensation amount, the respondents 1 to 5 in C.M.A. No. 585 of 2022 and the first respondent in C.M.A. No. 588 of 2022 are entitled to recover the compensation amount from him by filing execution proceedings against him. The appellant / insurance company is permitted to withdraw the amount deposited by them to the credit of M.C.O.P. Nos. 1020 & 1021 of 2018 along with interest and costs. No costs. Consequently, the connected Miscellaneous Petitions are closed.

21.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal,
   Additional District Court,
   Krishnagiri.

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

SUNDER MOHAN, J

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C.M.A. No. 585 & 588 of 2022
and
C.M.P. Nos. 4247 & 4253 of 2022

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