THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3825 of 2019
and
C.M.P.No.21921 of 2019

Shriram General Insurance Co. Ltd.,
II Floor, City Centre Complex, No.66,
Thirumala Pillai Road, Near Vani Mahal,
T.Nagar, Chennai – 600 017. ... Appellant / 3rd Respondent

Vs.

1.N.Deepa
2.Minor Dharshan
3.M.Maheswari ... Respondents 1 to 3/Petitioners
4.R.Selvarasu ... 4th Respondent/1st Respondent
5.R.Manickam ... 5th Respondent / 2nd Respondent

Prayer : Civil Miscellaneous Appeal filed 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 14th day of November, 2018 made in M.C.O.P.No.3552 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Court), Cuddalore.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.S.Udhayakumar [R1 to R3]
No appearance [R4 & R5]

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JUDGEMENT

Aggrieved by the award passed by the Motor Accidents Claims Tribunal (Principal District Court), Cuddalore, the appellant/Insurance Company has preferred the present appeal.

2. The 1st petitioner is wife, 2nd petitioner is son and 3rd petitioner is sister of the deceased Namachivayam. It is alleged that, on 23.06.2014 at about 15.00 hours, when the deceased was riding his TVS Star City motorcycle bearing Reg.No.TN-31-AE-7724, near Vivekananda Primary Nursery School, Chathiram, the first respondent's Tipper Lorry bearing Reg.No.TN-21-P-8746 came from the opposite direction, in a rash and negligent manner and dashed against the motorcycle of the deceased, as a result, the deceased sustained fatal injuries and died on the spot. The 1st respondent is the owner of the offending vehicle, 2nd respondent is the previous owner of the vehicle and the 3rd respondent is the insurer of the said vehicle. Due to the death of the deceased, the petitioners have filed a claim petition claiming a total compensation of a sum of Rs.40,00,000/- under various heads.

3. Before the Tribunal, the petitioner had examined two witnesses viz., P.W.1 and P.W.2 and marked 10 documents viz., Ex.P.1 to Ex.P.10. On the side of the respondents, they examined one witness viz., R.W.1 and marked 7 documents viz., Ex.R.1 and Ex.R.7. After adjudication, the Tribunal awarded compensation of Rs.12,15,00/- along with interest at 7.5% p.a., directing the third respondent/insurer to pay the compensation and, thereafter recover the same from the first respondent/owner of the vehicle. Aggrieved by the said order, the present appeal has been preferred by the insurer.

4. The learned counsel appearing for the appellant submitted that the Tribunal directed the appellant/insurer to pay the compensation amount to the claimants and thereafter, recover the same from the fourth respondent is not sustainable on the ground that the fourth respondent has not intimated the purchase of offending vehicle to the insurer and he has not paid the insurance premium at the relevant point of time, thereby, the policy issued in favour of the vehicle stood cancelled on 06.11.2013 and the same was intimated to the fifth respondent, whereas the accident had

happened on 23.06.2014, which is after the intimation of the insurer. Accordingly, he prays for allowing the appeal.

5. Per contra, the learned counsel appearing on behalf of the respondents 1 to 3 submitted that the accident had happened on 23.06.2014, prior to that, the fourth respondent purchased the offending vehicle from the fifth respondent on 05.10.2013. Though policy was valid upto 28.10.2013 and the same was expired on 27.10.2013, the fourth respondent paid the premium amount by way of cheque viz., Ex.R.2 and the same was dishonoured, however, the dishonour of cheque was not intimated to the respondents 4 and 5 at the relevant point of time. He also submitted that the said issue was elaborately considered by the Tribunal and the Tribunal had passed an award in favour of the claimants, which need not be interfered with. In support of his contention, he relied upon the judgment of the Apex Court in the case of ***Branch Manager, Oriental Insurance Co. Ltd., Vs. P.Chinraj & 3 Ors.*** reported in ***2023 (2) TN MAC 61.***

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the respondents 1 to 3 and perused the materials available on record.

7. The factum and manner of the accident is not in dispute. It is also an undisputed fact that the fourth respondent purchased the vehicle from the fifth respondent on 05.10.2013. It is the duty cast upon the fourth respondent to intimate the transfer of the vehicle to the appellant/insurer. At the relevant point of time, though the name was transferred at the RTO level, however, the same was not intimated to the appellant/insurer and the proof of intimation was not marked before the Tribunal. Further, the fourth respondent paid the premium for policy by way of cheque, which was marked as Ex.R.2 and on the same day, the cheque was dishonoured and the cancellation of policy was intimated on 06.11.2013 to the fifth respondent, who is the original owner of the vehicle, prior to the accident. Admittedly, the fourth respondent was aware of the expiry of policy on 28.10.2013, thereby, he paid the premium amount by way of cheque and the same was dishonoured. However, the fourth respondent had not taken any effective efforts to honour the cheque or to pay the premium by way

of other payment methods, thereafter, the accident had happened on 23.06.2014. Hence, the decision relied upon by the learned counsel appearing for the appellant/insurer is not applicable to the present case unless the fifth respondent had intimated the alienation of the vehicle to the appellant at the relevant point of time prior to the accident.

8. Though the vehicle was alienated by the fifth respondent in favour of the fourth respondent on 05.11.2013 and the registration of the vehicle was transferred in the name of the fourth respondent on 06.11.2013, however, the fourth respondent appeared before the Tribunal and filed a counter affidavit, in which he did not aver anything with regard to the transfer of Registration Certificate in his favour and the same was intimated to the appellant/insurer. The fifth respondent is aware that the policy expired on 28.10.2013, thereby he paid the premium by way of Ex.R.2 on 28.10.2013. However, the fourth respondent purchased the vehicle only on 05.11.2013 much after the expiry of the policy. If the registration is intimated to the appellant/insurer, it is the duty cast upon the appellant/insurer to intimate the expiry of insurance policy to the purchaser. In the present case, the fourth respondent purchased the vehicle

from the fifth respondent only on 05.11.2013, prior to that, the fifth respondent had issued a cheque on 28.10.2013 drawn in Indian Overseas Bank, Vadalur and the same was dishonoured on 28.10.2013 and the copy of return statement issued by HDFC Bank Ltd., Kumbakonam was marked as Ex.R.3. In this background, it is relevant to extract paragraph Nos.24 to 36 of the decision of this Court reported in ***2023 (2) TN MAC 61*** which reads as follows :-

> *24.A perusal of Exhibit R4, a copy of Notice which was furnished by the learned Counsel for the Insurance Company would indicate that Exhibit R4 copy has been marked only to R.T.O., Thanjavur. When a copy of Exhibit R4, dated 20.7.2010 is marked to R.T.O., Thanjavur, it is not known why R.T.O. official from Pattukottai was examined as RW2. It an official of R.T.O., Thanjavur was examined, it could have been established whether a Letter, dated 20.7.2010 was really sent to the Owner of the Car or not. It is clear that the Insurance Company has not chosen to either mark the Postal Receipt or Acknowledgment Copy or chosen to examine the R.T.O. official Thanjavur.*
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> *25. A combined reading of all these facts would clearly establish that Exhibit R4-alleged Intimation Letter has not been sent to the Owner of the vehicle.*
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> *26. Section 147(5) of the Motor Vehicles Act, 1988 is extracted as follows:*
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> > *"(5) Notwithstanding anything contained in any law for the time being in force, an Insurer issuing a Policy of Insurance under this Section shall be liable to indemnify the person or classes of persons specified in the Policy in respect of any liability which the Policy purports to cover in the case of that person or those classes of persons."*

27. Section 149(1) of the Motor Vehicles Act, 1988 is extracted as follows:

> *"149. Duty of Insurers to satisfy Judgments and awards against persons insured in respect of Third party risks. -- If, after a Certificate of Insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a Policy has been effected, Judgment or Award in respect of any such liability as is required to be covered by a Policy under Clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the Policy) or under the provisions of Section 163-A is obtained against any person insured by the Policy, then, notwithstanding that the Insurer may be entitled to avoid or cancel or may have avoided or cancelled the Policy, the Insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the Decree any sum not exceeding the sum assured payable thereunder, as if he were the Judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on Judgments."*

28. Now let us consider the Judgment of the Hon'ble Supreme Court and our High Court which have interpreted the above said provisions:

*29. In **Oriental Insurance Co. Ltd. v. Inderjit Kaur and others**, 1998 (1) SCC 371, the Hon'ble Supreme Court has held in Paragraph Nos. 9, 10 & 12 are as follows:*

> *"9. We have, therefore, this position. Despite the bar created by Section 64-VB of the Insurance Act, the Appellant, an authorised Insurer, issued a Policy of Insurance to cover the bus without receiving the Premium therefor. By reason of the provisions of Section 147(5) & 149(1) of the Motor Vehicles Act, the Appellant became liable to identify Third parties in respect of the liability which that Policy covered and to satisfy awards of Compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the Policy for the reason that the Cheque issued in payment of the Premium thereon had not been honoured.*

10. The Policy of Insurance that the Appellant issued was a representation upon which the Authorities and Third parties were entitled to act. The Appellant was not absolved of its obligations to Third parties under the Policy because it did not receive the Premium. Its remedies in this behalf lay against the insured.

12. It must also be noted that it was the Appellant itself who was responsible for its predicament. It had issued the Policy of Insurance upon receipt only of a Cheque towards the Premium in contravention of the provisions of Section 64-VB of the Insurance Act. The public interest that a Policy of Insurance serves must, clearly, prevail over the interest of the Appellant."

*30. In **New India Assurance Co. Ltd. v. Rula and others,** 2000 (2) CTC 179 (SC): 2000 (3) SCC 195 in Paragraph No.13, the Hon'ble Supreme Court has held as follows:*

"13. This decision, which is a 3-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the Insurance Policy in the instant case on the ground that the Cheque through which Premium was paid was dishonoured, would not affect the rights of the Third party which had accrued on the issuance of the Policy on the date on which the accident took place. If, on the date of accident, there was a Policy of Insurance in respect of the vehicle in question, the Third party would have a claim against the Insurance Company and the Owner of the vehicle would have to be indemnified in respect of the claim of pay party. Subsequent cancellation of Insurance Policy on the ground of non-payment of Premium would not affect the rights already accrued in favour of the Third party."

*31. In **National Insurance Co. Ltd. v. Abhaysing Pratapsing Waghela & others,** 2008 (2) TN MAC 448 (SC), the Hon'ble Supreme Court in Paragraph Nos. 16 and 17 have held as follows:*

"16. .... If a Cover Note is issued, it remains valid till it is cancelled. Indisputably, the Insurance Policy was itancelled

only after the accident took place. A finding of fact, therefore, has been arrived at that prior to the deposit of the Premium of Insurance in cash by the Owner of the vehicle, the Cover Note was not cancelled.

17. It is in the aforementioned situation, we are of the opinion, that the Judgment of the High Court cannot be faulted. No doubt, a Contract of Insurance is to be governed by the terms thereof, but a distinction must be borne in mind between a Contract of Insurance which has been entered into for the purpose of giving effect to the object and purport of the Statute and one which provides for reimbursement of the liability of the Owner of the vehicle strictly in terms thereof. In that limited sense, a Contract of Insurance entered into for the purpose of covering a Third party risk would not be purely contractual. We may place on record that an ordinary Contract of Insurance does not have a statutory flavour. The Act merely imposes an obligation on the part of the Insurance Company to reimburse the Claimant both in terms of the Act as also the Contract. So far as the liability of the Insurance Company which comes within the purview of Sections 146 & 147 is concerned, the same subserves a Constitutional goal, namely, social justice. A contract of Insurance covering the Third party risk must, therefore, be viewed differently vis-a-vis a Contract of Insurance qua contract."

32. The Hon'ble Supreme Court in a Judgment reported in ***United India Insurance Co. Ltd. v. Laxmamma and others,*** *2012 (1) TN MAC 481 (SC) : 2012 (5) SCC 234 in Paragraph Nos.26 & 27 have held as follows:*

"26. In our view, the legal position is this: where the Policy of Insurance is issued by an authorised Insurer on receipt of Cheque towards the payment of Premium and such a Cheque is returned dishonoured, the liability of the authorised Insurer to indemnify the Third parties in respect of the liability which that Policy covered subsists and it has to satisfy the award of Compensation by reason of the provisions of Section 147(5) & 149(1) of the MV Act unless the Policy of Insurance is cancelled by the authorised Insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the Policy of Insurance is issued by an authorised 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.

27. Having regard to the above legal position, insofar as the facts of the present case are concerned, the Owner of the Bus obtained the Plicy of Insurance from the Insurer for the period 16.4.2004 to 15.4.2005 for which Premium was paid through Cheque on 14.4.2004. 2004. The accident occured on 11.5.2004. It was only thereafter that the Insurer cancelled the Insurance Policy by Communication, dated 13.5.2004 on the ground of dishonour of Cheque which was received by the Owner of the vehicle on 21.5.2004. The cancellation of Policy having been done by the Insurer after the accident, the Insurer became liable to satisfy the award of Compensation passed in favour of the Claimants."

*33. The Hon'ble Supreme Court in a Judgment reported in **National Insurance Co. Ltd. v. Balkar Ram & others**, 2014 (2) TN MAC 733 (SC): 2013 SCC Online 592 has held as follows:*

"The Appellant/Insurance Company assailed the Award passed by the Tribunal on the ground that the Cover Note for the Policy of Insurance was issued on 7.4.2000 for which a Cheque was submitted by the Owner. However, the Cheque was dishonoured by the bank on 17.4.2000. Subsequently, the vehicle which was insured with the Appellant-Insurance Company met with an accident on 19.4.2000. The Appelant-Insurance Company, therefore, contended that as the Policy of Insurance could not be held to be a valid document in view of the fact that the Cheque towards the Policy had been dishonoured even before the accident had taken place, the Insurance Company was not liable to indemnify the Claimants by paying the amount which fell into its share as per the Tribunal's Award and it is the Owner which is liable to pay the entire amount of Compensation to the Respondents/Claimants.

However, we compliment Ms. Kiran Suri, learned Counsel for the Appellant for cutting short the controversy by fairly pointing out the ratio of the Judgment titled United India Insurance Co. Ltd. v. Laxmamma & ors.. 2012 (1) TN MAC 481 (SC): 2012 (5) SCC

234, wherein, it has been held that the Insurance Company is liable to satisfy the Award, if the Intimation regarding the dishonour of the Cheque and cancellation of Policy is communicated to the Policy-holder after the date of the accident. Thus, the defence of the Insurance Company that the Policy of Insurance was not valid, since the Cheque had been dishonoured prior to the accident would not exonerate them from making the payment of Compensation. In this matter, admittedly the accident had taken place on 19.4.2000 and the Cheque although had been dishonoured prior to the accident on 17.4.2000, the Intimation to the Policy-holder had been given by the Insurance Company on 26.4.2000, in view of which the Insurance Company cannot be allowed to contend that the Policyholder was not holding a valid Policy of Insurance in regard to the vehicle which met with an accident. Admittedly, the Policy-holder had already issued another Cheque substituting the Cheque which had earlier been dishonoured."

34. The Division Bench Judgment of our High Court in a Judgment reported in Oriental Insurance Co. Ltd., Cuddalore v. M. Pushpan and others, 2009 (1) TN MAC 608 (DB): 2009 (3) CTC 378 (DB) in Paragraph Nos. 18, 25 & 26 have held as follows:

"18.......As stated, the accident took place on 24.8.2003 and the cancellation of the Policy was on 3.9.2003 i.e. much after the accident. Therefore, it is to be seen that on the date of the accident, the Insurance Policy was not cancelled. If the Insurance Company had been diligent, they could have asked from their Bankers about the dishonour of the Cheque at the earliest point of time and intimated the Insured, the Insured would have had an option to immediately remit the Premium. Therefore, we hold that the Insurance Company is liable to settle the claim.

25. In a recent decision of the Full Bench of this Court reported in Branch Manager, United India Insurance Co. Ltd. v. Nagammal, 2009 (1) TN MAC 1 (FB): 2009 (1) CTC 7 (FB), it had an occasion to consider the dictum of 'Pay and Recovery': The question that was referred for consideration before the Larger Bench in the said matter is to the following effects:

Thus, as held by the Hon'ble Full Bench it is the discretion of the Appellate Court depending upon the facts and circumstances of the case whether the Doctrine of Pay and Recover should be applied. In the earlier part of this Judgment we have upheld the contuber of the Tribunal that the accident occurred due to the negligence of the Tata Sumo Vehicle and that the Insurance Policy was admittedly cancelled only after the date of accident. From the chronology of dates given by the Learned Counsel for the Appellant it is seen that no steps were taken by the Insurance Company for nearly one month after their bankers received Intimation regarding the dishonour of the Cheque. Therefore, the Insurance Company have to be held responsible for their own act and cannot be heard to say that even though the accident occurred prior to the cancellation of the Policy they have to be absolved of their liability. It is to be noted that the Hon'ble Full Bench had stated that the Doctrine of Pay and Recover has not been applied in all cases by the Honble Supreme Court in respect of matters which are not strictly covered under Sections 149(4) & 149(5) and it has been applied by the Hon'ble Supreme Court depending upon the facts and circumstances of a particular case. Therefore we are not inclined to grant the prayer sought for by the learned Counsel for the Appellant to pay and recover. In the light of the decision rendered by the Full Bench of our Court, we are unable to accept the submissions made by the learned Counsel for the Appellant.

26. It is to be noted that the Insurance Company was not diligent in the sense that the fact of dishonour was made known to the insured belatedly. He was, therefore, perhaps denied the opportunity to have the Policy renewed immediately thereafter....."

35. The preposition of law laid down by the Hon'ble Supreme Court and the Division Bench of our High Court could be summarised as follows:

(i) A Contract of Insurance entered into for the purpose of covering a Third party risk would not be purely contractual. An ordinary Contract of Insurance does not have a statutory flavour. The Motor Vehicles Act merely imposes an obligation on the part of the Insurance Company to reimburse the Claimant both in terms of the Act as also the Contract. However, so far as the liability of the Insurance Company which comes within the purview of Sections 146 & 147 are

concerned, the same has to be viewed differently vis-a-vis a Contract of Insurance qua contract.

(ii) Once the Insurance Company had issued a Policy of Insurance without receiving the Premium, in view of the provisions of Sections 147(5) & 149(1) of the M.V. Act, the Insurance Company is liable to indemnify the Owner in respect of the statutory liability notwithstanding its right to avoid or cancel the Policy for the reason that the Cheque issued for payment of the Premium have not been honoured.

(iii) The liability of the Insurance Company to indemnify the Third Party continues to subsists in view of the provisions of Section 147(5) & 149(1) of the MV Act unless the Policy of Insurance is cancelled by the Insurance Company and Intimation of such cancellation has reached the insured before the accident. To avoid liability to pay Compensation arising out of the accident, the Insurance Company ought to have intimated the insured about the cancellation of the Policy before the date of the accident. Even if the intimation reached the insured person after the accident, the Company is still liable. The burden is upon the Insurance Company to establish that they have intimated the insured person about the cancellation of the Insurance Policy before the date of accident.

(iv) Only in cases where the dishonour of the Cheque and the cancellation of the Policy are intimated to the insured person before the accident, the Insurance Company would not be liable to satisfy the Award.

*36. Section 149(1) of the Motor Vehicles Act clearly points out that the Insurer is liable to satisfy the Judgment and award against the persons insured in respect of Third party risk not withstanding the fact that that Company may be entitled to avoid or cancel or may be avoided or cancelled the Policy. In case if no intimation has been issued by the Insurance Company to the insured before the accident, they will not be entitled to even claim pay and recover in view of the Division Bench Judgment of our High Court in a Judgment reported in **Oriental Insurance Co. Ltd., Cuddalore v. M. Pushpan and others,** 2009 (1) TN MAC 608 (DB): 2009 (3) CTC 378 (DB) and therefore, the Insurer and insured are jointly and severally liable to satisfy the Award.*

9. A perusal of the above reveals that if the cheque issued towards payment of premium for renewal of the policy has been dishonoured, though the policy already issued has not been cancelled and such intimation is not given to the insured before the date of accident, then for non-compliance of the said procedure, the Insurance Company has to pay the compensation and recover the same from the owner of the vehicle. However, in the present case, the policy expired on 28.10.2013 and the vehicle was purchased by the fourth respondent from the fifth respondent on 05.11.2013, prior to that, the fourth respondent was aware of the expiry of insurance policy on 28.10.2013 and issued cheque/Ex.R.2 in favour of the appellant and on the same day, the cheque was dishonoured and the copy of return statement was marked as Ex.R.3. Further, the cancellation of the policy was also intimated to the fifth respondent on 06.11.2013 and the same was also marked as Ex.R.4. In this background, pay and recovery ordered by the Tribunal is not sustainable, which is contrary to the decision rendered by this Court.

10. For the reasons aforesaid, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal is set aside. The appellant is permitted to withdraw the entire compensation amount already deposited by it before the Motor Accident Claims Tribunal (Principal District Court), Cuddalore to the credit of M.C.O.P.No.3552 of 2014 and the respondents 1 to 3 are at liberty to recover the compensation amount from respondents 4 and 5, who are the owner and previous owner of the vehicle, in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

03.10.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accident Claims Tribunal,
(Principal District Court),
Cuddalore.

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

M.DHANDAPANI, J.,

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C.M.A.No.3825 of 2019

03.10.2023