



C.M.A.No.1578 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY JUDGMENT RESERVED ON : 24.04.2023

JUDGMENT PRONOUNCED ON : 19.07.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1578 of 2020
and C.M.P.No.11633 of 2020

M/s.Bajaj Allianz General Insurance Company Ltd.,
No.25/26, Prince Towers,
College Road,
Chennai – 600 006.

... Appellant

vs.

1.Tmt.Manonmani

2.N.Venkatesan

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 30 of the Employees' Compensation Act, 1923, against the Final Award dated 06.01.2020, (Received on 21.02.2020), passed in E.C.No.106 of 2011, by the learned Commissioner for Employees Compensation, (Joint Commissioner of Labour – II) at Chennai.

For Appellant : Mr.J.Michael Visuvasam



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For R1 : Mr.A.G.F.Terry Chella Raja

For R2 : No appearance

* * * * *

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Final Award dated 06.01.2020, (Received on 21.02.2020), passed in E.C.No.106 of 2011, by the learned Commissioner for Employees Compensation, (Joint Commissioner of Labour – II) at Chennai.

2.Notice of motion was ordered on 15.10.2020 in the appeal. At the request of both learned counsels the appeal is heard finally.

3.The appellant/Insurance Company raised the following Substantial Questions of Law:

- Whether the finding of the learned Joint Commissioner saddling the appellant with liability to satisfy the Final Award without any reasoning, can be sustained?
- Whether the learned Joint Commissioner was



justified in directing the appellant to indemnify for and on behalf of the second respondent, when the consideration for the Contract of Insurance/Indemnity itself had failed and the Contract itself had become void ab initio?

- Whether the appellant had adduced secondary evidence with regard to the lost instrument namely, the dishonoured cheque issued by the second respondent, towards payment of premium, making the contract of Insurance void, due to failed consideration, whether the direction issued by the learned Joint Commissioner to the appellant, to satisfy the final Award can be sustained?

- Whether the learned Commissioner was justified in awarding interest at the rate of 12% per annum, from the date of accident till the date of deposit, without excluding the period (24.02.2015 to 17.10.2016), during which the Claim Petition remained dismissed for default, as per the Orders passed in I.A.No.54 of 2016, dated 17.10.2016?

4.The appeal is filed by the Insurance Company challenging its liability to pay the compensation to the claimant.



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5.The applicant is the mother of the deceased Siva. According to the applicant, her son Siva was employed with the first opposite party as a driver and was earning a sum of Rs.7,500/- per month along with batta of Rs.100/- per day. On 11.12.2010, while the said Siva was driving the Tata Van he dashed against a Tamarind Tree, sustained grievous injuries and later succumbed to the same.

6.The first opposite party employer of the deceased filed the counter statement admitting the relationship of employer and the employee. The first opposite party further submitted that he had insured his vehicle with the second opposite party under Policy No.OG-10-1520-1803-00000250 which was valid from 14.07.2009 to 13.07.2010. The first opposite party therefore submitted that the liability would be that of the second opposite party.

7.The second opposite party/Insurance company submitted that the policy was cancelled as the cheque for premium issued by the first opposite party was dishonoured. According to the second opposite party, as the



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consideration for the policy failed, the policy was cancelled and hence the second opposite party was not liable to pay the compensation to the applicant on behalf of the first opposite party.

8.Before the Commissioner for Employees' Compensation, Joint Commissioner of Labour – II, Chennai the applicant examined herself as PW1 and Ex.R1 to Ex.R8 were marked. The Tribunal on an assessment of the entire evidence on record and after framing the relevant issues passed the award in favour of the applicant granting a sum of Rs.8,02,600/- as compensation along with 12% interest and mulcted the liability on the second opposite party, the Insurance Company. Aggrieved by the final award passed by the learned Joint Commissioner of Labour – II, Chennai, the Insurance Company has filed the above appeal.

9.The learned counsel for the second opposite party by referring to the substantial question of law above stated submitted that the Tribunal erred in mulcting the liability on the Insurance Company overlooking that the policy was cancelled and the cancellation of the policy was also



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intimated to the first opposite party and to the RTO. The learned counsel further submitted that the Tribunal erred in awarding interest at 12% per annum from the date of accident till the date of deposit without excluding the default period from 24.02.2015 to 17.10.2016, which period was directed to be excluded in the order dated 17.10.2016 passed in I.A.No.54 of 2016.

10.The learned counsel for the applicant on the other hand submitted that the learned Joint Commissioner of Labour – II, Chennai was justified in rejecting the appellant's plea of cancellation of policy and therefore there were no merits in the appeal.

11.The short point for consideration in the appeal is whether the second opposite party, Insurance Company is liable to pay the compensation to the applicant. The accident and the quantum of compensation awarded by the Joint Commissioner of Labour – II, Chennai are not disputed. Even the employer and the employee relationship and that the accident occurred in the course of employment are not disputed. The only point agitated in the



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appeal is as to the liability of the second opposite party to indemnify the first opposite party. It is the case of the second opposite party that even before the accident which occurred on 11.02.2010, the policy was cancelled and the cancelled policy was marked as Ex.R2. The second opposite party examined it's official to prove that the policy was cancelled and the same was intimated not only to the first opposite party, but also to the concerned RTO. The second opposite party marked the copies of the dishonoured cheques [Ex.R3], the intimation of the bank regarding the dishonour of the cheque [Ex.R4], the intimation of the bank on the reason for dishonour of the cheque [Ex.R5], the intimation sent to the first opposite party [Ex.R6], the returned acknowledgment card [Ex.R7] and the intimation sent to the original Transport office along with the acknowledgment [Ex.R8]. It is seen from Ex.R7 that the letter was sent to the first opposite party on 22.07.20009, intimating about the cancellation of policy. The return cover is also attached to Ex.R7, similar letter under Ex.R8 was addressed to the RTO and the acknowledgment in proof of the receipt of the said letter is also marked. It is to be noted here that under Section 27 of the General Clause Act, 1897, a presumption of due service or proper service is raised, if



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the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgement due is received from the addressee or not.

12.As discussed above from Ex.R7 and Ex.R8 it is clear that the letter intimating about the dishonour of cheques and cancellation of policy has been sent to the address of the first opposite party to the address given in the policy by way of Registered post, which was returned. Therefore the letter having been sent by registered post to the first opposite party to the address given in the policy a presumption of service on the first opposite party to whom the same was sent is raised. It is further to be noted that as the notice of cancellation by registered post was sent to the concerned RTO also and the acknowledgment was also filed, the service of notice of cancellation can be treated as sufficient and the second opposite party can be permitted to plead that it had duly intimated to the first opposite party and the RTO regarding the cancellation of the policy. Once it is established by the second opposite party that the cancellation of the policy was well before the



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date of accident then the liability can not be mulcted on it. The Hon'ble

Supreme Court in the case of ***United India Insurance Co. Ltd. v.***

Laxmamma (2012 ACJ 1307 (SC)) held as follows:

“In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards 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 sections 147 (5) and 149(1) of the Motor Vehicles 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 towards premium and the cheque gets dishonoured and before the accident of



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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 third parties which that policy covered ceased and the insurance company is not liable to satisfy awards of compensation in respect thereof.”

13.The aforesaid Judgment of the Hon'ble Supreme Court was followed by the Division Bench of this Court in the case of ***The New India Assurance Company Limited Vs. Azhagusumathi and others in C.M.A.No.2240 of 2011.*** The Division Bench after reiterating the law laid down by the Hon'ble Supreme Court held that the claim of the third party could not be defeated for the self created predicament of the insurer in issuing the policy without actually receiving the premium. Therefore the Division Bench directed the Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner. Following the Judgment of the Hon'ble Division Bench in the case of ***The New India Assurance Company Limited Vs. Azhagusumathi and others in***



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C.M.A.No.2240 of 2011, I am of the view that the second opposite party/Insurance Company may be directed to pay the compensation amount to the application and thereafter recover it from the first opposite party.

14.The contention of the learned counsel for the second opposite party, Insurance Company that the Tribunal erred in awarding the interest for the entire period without deducting the interest for the default period is sustainable and therefore I hold that the applicant shall not be entitled to interest for the default period from period from 24.02.2015 to 17.10.2016, which period was directed to be excluded in the order dated 17.10.2016 passed in I.A.No.54 of 2016.

15.In the light of the above discussions, the Civil Miscellaneous Appeal is partly allowed with the following directions:

1.The final award of the Commissioner for Employees Compensation, (Joint Commissioner of Labour – II) at Chennai, in so far as it mulcted the liability on the Insurance Company alone is set aside;



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2.The Insurance Company has already paid the compensation awarded by the Commissioner for Employees Compensation, (Joint Commissioner of Labour – II) at Chennai. The Insurance Company is therefore permitted to recover the compensation awarded from the first opposite party by following the Judgment of the Hon'ble Supreme Court in the case of Oriental Insurance Company Vs. Nanjappan and others reported in (2004) 13 SCC 224; and

3.The claimant is further permitted to withdraw the compensation award by making proper application before the Commissioner for Employees Compensation, (Joint Commissioner of Labour – II) at Chennai.

16.Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above directions. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.



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Index : yes/no

Internet : yes/no

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To

1.The V Additional Judge, City Civil Court, Chennai
(FAC) I Additional City Civil Court,
Chennai.

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



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N.MALA, J.

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PRE-DELIVERY JUDGMENT IN
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