IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM :

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

C.M.A.No.1729 of 2017 and
C.M.P.No.9364 of 2017

Bajaj Allianz General Insurance Co.Ltd.,
New No.277, Old No.498, Poonthamallee High
Road, Arumbakkam, Chennai – 600 106. ... Appellant

Vs.

1. Vikrant Rana
2. T.Chandrikaraj ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 29.07.2016 made in M.C.O.P.No.4154 of 2013 on the file of Motor Accident Claims Tribunal (Special Sub Court No.1 to deal with M.C.O.P. Cases) Madras.

For Appellant : M/s.R.V.Sivaraj

For Respondents : Ms.Sunitha Abirami for
Mr.M.Malar for R1
No appearance for R2

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JUDGEMENT

This Civil Miscellaneous Appeal is filed against the decree and judgment dated 29.07.2016 made in M.C.O.P.No.4154 of 2013 on the file of Motor Accident Claims Tribunal (Special Sub Court No.1 to deal with M.C.O.P. Cases).

2. It is the case of the claimants that on 31.05.2015 at about 11:30 p.m. when the petitioner was crossing the road a car bearing registration No.TN 07 BL 3118 driven by its driver driven in a rash and negligent manner hit the petitioner and the petitioner sustained grievous injuries, for which the petitioner was hospitalized and had taken treatment and therefore claiming compensation for the injuries suffered, the claim petition was preferred by the claimant.

3. Before the Tribunal, the claimant examined himself as P.W.1 and examined the doctor as P.W.2 and marked Exs.P.1 to Ex.P.8. The insurance company examined R.W.1 and R.W.2 and marked Exs. R1 to R6 were examined. After adjudication, the Tribunal awarded a sum of Rs.4,00,337/- under various heads the in favour of the claimant. Aggrieved over the same, the appellant / insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant submits that there was no valid policy on the date when the accident had taken place.

As the policy which was issued by the appellant by receiving the cheque on 01.05.2013 having validity from 05.05.2013 to 04.05.2014 was cancelled in view of the dishonour of the cheque which was intimated by the appellant's banker on 10.05.2013 which was in turn intimated to the Road Transport Office as well as the appellant on 31.05.2013 and there being no policy subsisting on the said date no liability can be fastened on the appellant to pay the compensation. However, the Tribunal has erroneously passed the order directing the appellant to pay the compensation and thereafter recover the same from the first respondent which is erroneous which requires interference.

5. Per contra the learned counsel appearing for the first respondent submits that upon considering the oral and documentary evidence the Tribunal has passed the award under various heads which does not require any interference and the same is just and reasonable. He further submits that merely because the cheque has been dishonoured cannot be the basis rejecting the compensation payable to the claimant as the Motor Vehicles Act is benevolent legislation and the claimant being the third party, necessarily the insurer has to pay the compensation and

thereafter recover the same from the owner. The Tribunal has rightly passed the order which requires interference.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials placed on record.

7. A perusal of the materials available on record reveals that the accident is not disputed. The only dispute is with regard to the liability of the insurer to pay the compensation to pay the compensation as according to the appellant there was no valid policy subsisting as the dishonour of the cheque resulted in the cancellation of the policy which was informed to the owner of the vehicle.

8. A careful consideration of the materials reveal that the cheque was issued on 01.05.2013 and the policy was put in force from 05.05.2013 to 04.05.2014. However, the cheque was dishonoured and the intimation was sent by the appellant bankers on 10.05.2013, the appellant claimed that the notices were issued on 14.05.2013 informing the owner of the vehicle as also the Road Transport Office(R.T.O) about the

cancellation of the policy as the date of the accident is 31.05.2013, the appellant claims that it is not liable to pay the compensation. Though it is claimed by the appellant that they have informed the owner of the vehicle about the dishonour of the cheque vide Ex.R4 and the R.T.O. through Ex.R5 it is seen that Ex.R4 and R5 are mere letters which was addressed to the owner of the vehicle and the R.T.O and acknowledgment with regard to the receipt has not been filed. In the absence of acknowledgment, it cannot be deemed that the communication was received by the owner and R.T.O. In such a situation, the insurer cannot get itself absolved of its liability to pay the compensation. Appreciating the materials aforesaid in the proper perspective, the Tribunal has rightly granted compensation and directed the insurer to pay the same to the claimant and recover it from the owner of the vehicle which cannot be said to be erroneous.

9. In this regard useful reference can be had to the decision of the Hon'ble Apex Court in the case of United India Insurance Co. Ltd. Vs. Laxamamma and others reported in 2012 ACJ 1307 wherein the Hon'ble Apex Court as held thus:

"'19. 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 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.

20. Having regard to the above legal position, insofar as facts of the present case are concerned, the owner of the bus obtained policy of insurance from the *insurer for the period 16.04.2004 to 15.04.2005 towards which premium was paid through cheque on 14.04.2004. The accident occurred on 11.5.2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13.05.2004 on the ground of dishonour of cheque which was received by the owner on 21.5.2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy award of compensation passed in favour of the claimant"*

10. For the reasons aforesaid, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2023

Index : Yes / No
Speaking order / Nonspeaking order
Netrual Citation Case : Yes / No
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<u>M.DHANDAPANI, J.</u>

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To
1. Motor Accident Claims Tribunal Madras.
2.The Section Officer, V.R.Section, High Court, Madras.

<u>C.M.A.No.1729 of 2017</u>

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