IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
27.11.2023	01.12.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO. 737 OF 2020
AND
C.M.P. NO. 4542 OF 2020

M/s.IFFCO TOKIO General Insurance
Co. Ltd, Tulasi Chambers, 3rd Floor
195, T V Samy Road, R.S. Puram
Coimbatopre 641 002. .. Appellant

- Vs -

1. Thulasiammal
2. K.Boopathi
3. V.Menaka
4. Selvi
5. Minor Sanjay
Rep. By mother/guardian Selvi
6. S.Muthupandi
7. N.Lavanya .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.4.2019, made in MCOP

No.681 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : Mr. S.Arun Kumar

For Respondents : Mr. S.Arjun for RR-1 to 5
Mr. Ramesh Kumar G.Chopda for R-7

JUDGMENT

Assailing the judgment and decree in and by which the Tribunal had directed payment of compensation to be made by the appellants to the claimants and, thereafter, to recover the same from the 7th respondent, viz., the owner of the vehicle, the present appeal has been directed.

2. For the sake of convenience, the appellant/insurance company, respondents 1 to 5/claimants and the 7th respondent/owner of the vehicle shall be referred to as insurer, claimants and insured.

3. The short facts leading to the filing of the present appeal are as under :-

On the fateful day of 27.2.2015, at about 10.15 p.m., when the deceased Kuppusamy, was crossing the road, the tempo bearing Regn. No. TN-37-J-2661, belonging to the 7th respondent and being driven by the 1st respondent, in a rash and negligent manner dashed against the deceased, due to which the deceased sustained severe head injuries and died on the spot. Therefore, the claimants, filed the present petition seeking compensation in a sum of Rs.7,00,000/=.

4. Before the Tribunal, the claimants examined P.W.s 1 and 2 and marked Exs.P-1 to P-10. On the side of the insurer, R.W.1 was examined and Exs.R-1 and R-2 were marked. On the basis of the oral and documentary evidence, the Tribunal, while held that there is a clear violation of the policy conditions and that the insurer would not be liable to pay the compensation to the claimants and that the insured alone would be liable to pay the compensation to the claimants, however, to protect the interest of the claimants, ordered the insurer to pay the compensation so ordered to the claimants and to recover the same from the insured, viz., the owner of the vehicle. Aggrieved by the said order, the present appeal has been filed by the appellant/insurer.

5. Learned counsel appearing for the insurer submitted that the policy document, Ex.R-1, which has been marked before the Tribunal, which covers the vehicle in question, comes into force only after 00.00 hours on the midnight of 28.2.2015 and is valid till 27.2.2016. However, the accident having taken place at 10.15 p.m. on 27.2.2015, which is before the coming into force of the policy, there is no coverage at the material point of time and, therefore, the insurer cannot be compelled to pay the compensation and recover the same, thereafter, from the insured, viz., the owner of the vehicle.

6. In support of the aforesaid submissions, learned counsel for the insurer placed reliance on the following decisions :-

i) *Oriental Insurance Co. Ltd. – Vs – Sunita Rathi & Ors. (1998 (1) SCC 365);*

ii) *The Branch Manager, National Insurance Co. Ltd. – Vs – Vijayalakshmi & Ors. (2017 (1) TN MAC 168 (DB))*

7. Per contra, learned counsel appearing for the claimants submitted that the premium amount towards the policy having been paid by the insured prior to the time the accident occurred and the policy having come to be issued, the

insurer is bound to compensate the claimants and if at all the contract specifies a specific time when the policy would come into force, that would in no way deter the claimants from claiming compensation, as Section 145 (5) is a benevolent legislation, which is aimed at safeguarding the family which has been rocked by the aftermaths of the accident, the order passed by the Tribunal is just and reasonable. Further, it is the submission of the learned counsel that the recovery of compensation by the insurer from the insured would be more easier considering the vast expanse of facilities available at the disposal of the insurer, which is not the case with the claimants and only on that ground the scheme of pay and recover has been carved out and, therefore, the Tribunal, considering the calamitous situation faced by the claimants has passed the above order.

8. It is the further submission of the learned counsel that the postponement of commencement of the insurance period to 00.00 hours on 28.02.2015 cannot be put against the claimants, as the same is unlawful and is against the intention of the Motor Vehicles Act. In this regard, learned counsel drew the attention of this Court to the decision in ***Oriental Insurance Co. Ltd. – Vs – Venkataraman (2013 (1) TN MAC 460).*** It is the further submission of the

learned counsel that insurance contracts cannot be brought within the ambit of ordinary contracts and strict interpretation of the same has always been desisted by the Apex Court, more so when the liability under the Motor Vehicles Act is a statutory liability and a beneficial legislation to advance the purpose of the Act. In support of the aforesaid submission, learned counsel placed reliance on the decision in ***National Insurance Co. Ltd. – Vs – Abhayasing Pratapsing Waghela & Ors. (2008 (2) TN MAC 448 (SC))***, wherein the Supreme Court has held that unilateral and unconscionable clauses employed in the contract of insurance cannot curtail the statutory obligation of the insurer to discharge the obligation of the insured and that the insurance policy would duly come into force immediately and any other contention will go against the very purpose of the insurance concept.

9. Learned counsel appearing for the insured/owner of the vehicle, viz., the 7th respondent, submitted that the contract of insurance are standard form contracts, which put the insurer as the dominant party, who can dictate terms and putting the consumer either to take it or leave it and that the said contract are grossly one sided in favour of the insured due to the weak bargaining power

of the insured, which has weighed with the Supreme Court in the decision in ***Texco Marketing Pvt. Ltd. – Vs – TATA AIG General Insurance Co. Ltd. & Ors. (2023 (1) SCC 428)***, wherein the Apex Court held that though a contract of insurance is a voluntary act on the part of the consumer, the obvious intendment is to cover any contingency that might happen in future and a premium is obviously paid for the said purpose as there is a legitimate expectation of reimbursement when act of God happens. Therefore, the present accident being an act of God, which has taken place after the renewal of the policy, necessarily it is the duty of the insurer to compensate the claimants and the recovery ordered by the Tribunal is grossly erroneous and the same warrants interference at the hands of this Court.

10. It is the further submission of the learned counsel for the insured that even otherwise, if this Court is not agreeable with the aforesaid submission, the compensation awarded awarded by the Tribunal, is grossly higher, as the age of the deceased has been wrongly fixed and the multiplier adopted is also not in consonance with the decision in the case of ***Sarla Verma & Ors. – Vs – Delhi Transport Corporation & Ors. (2009 (6) SCC 121)***. Further, dependency of the

claimants has also not been properly appreciated and the deduction of 1/3rd towards personal expenses is also erroneous and, therefore, the compensation requires modification.

11. In fine, it is the contention of the learned counsel that the order of the Tribunal directing payment of compensation by the appellant and, thereafter, proceed with recovery of the same from the insured does not suffer the vice of any illegality and, therefore, this Court may not interfere with the said order.

12. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing for the appellant and the learned counsel appearing for the claimants and also perused the materials available on record as also the decisions relied on by the respective counsel.

13. The issues that falls for consideration of this Court in the present appeal are -

i) *Whether there was a policy, in force at the time of the accident to fasten liability on the insurer to pay the compensation to the appellant.*

ii) *Whether the order directing the appellant to pay the compensation to the claimants and, thereafter, to recover the same from the insured/owner of the vehicle is sustainable.*

14. The foremost submission advanced on behalf of the insurer is that when at the particular point of time, the risk is not covered by the insurer, though a policy had come to be issued on payment of premium, liability cannot be fastened on the insurer to pay the amount and, thereafter, recover the same from the insured/owner of the vehicle.

15. The policy stood renewed by paying the premium on 27.2.2015 at 8.48 p.m., as is evidenced from the policy document in which the insurer has categorically undertaken that the risk cover would start from 00.00 hours on 28.12.2015; however, the accident took place at 10.15 p.m. on 27.2.2015 and

according to the insurer the risk is not covered during that period and, therefore, the insurer is not liable to pay compensation.

16. The Supreme Court, in *Sunita Rathi case (supra)*, had occasion to consider the scope of a policy and the period during which it will be operable and in that context, held as under :-

> *"2. The motor accident occurred on 10th December, 1991 at 2.20 PM It was only thereafter the same day at 2.55 PM that the insurance policy and the cover note were obtained by the insured, owner of the motor vehicle involved in the accident. There is express mention in the cover note that the effective date and time of commencement of the insurance for the purpose of the Act was 10th December, 1991 at 2.55 PM. The applicability of the decision in Ram Dayal's case (supra) has to be considered on these facts. In our opinion the decision in Ram Dayal's case (supra) is distinguishable and has no application to the facts of this case. The facts of that decision show that the time of issuance of the policy was not mentioned therein and the question, therefore, was of presumption when the date alone was mentioned and not the time at which the insurance was to become effective on that date. In such a situation, it was held in Ram Dayal's case (supra) that in the absence of any specific time being*

mentioned, the logical inference to draw was that the insurance became effective from the previous mid-night and, therefore, for an accident, which took place on the date of the policy, the insurer became liable. There is no such difficulty in the present case in view of the clear finding based on undisputed facts that the accident occurred at 2.20 PM and the cover note was obtained only thereafter at 2.55 PM in which it was expressly mentioned that the effective date and time of commencement of the insurance for the purpose of the Act was 10.12.1991 at 2.55 PM. The reliance on Ram Dayal's case (supra) by the Tribunal and the High Court was, therefore, mis-placed, we find that in a similar situation, the same view which we have taken, was also the view in M/s. National Insurance Co. Ltd. vs. Smt. Jikubhai Nathuji Dabhi & Ors. 1996 (8) SCALE 695, wherein Ram Dayal's case (supra) was distinguished on the same basis.

It follows that the insurer cannot be held liable on the basis of the above policy in the present case and, therefore, the liability has to be of the owner of the vehicle. However, we find that the High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable in the present case. This conclusion, reached by the High Court, is clearly erroneous. The liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance. There is, thus, a basic *fallacy in the conclusion reached by the High Court on this point."*

17. However, the said decision is sought to be distinguished by the learned counsel for the claimants by submitting that in the said decision the policy of insurance was issued subsequent to the accident, whereas in the present case, the policy of insurance was issued prior to the accident and, therefore, the insurer cannot put any shackles on the insured that the risk would be covered only from a particular point of time. In this length, it is submitted that the Motor Vehicles Act is a benevolent legislation, which has to be interpreted in favour of the claimants and it cannot be interpreted in detriment to the claimants. In this regard, reliance is placed on the decision in *Abhaysing case (supra)*, by pointing out that benevolent provision under the Motor Vehicles Act should be construed in favour of the claimants, wherein the Apex Court had held thus :-

> *"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 and 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-`- vis a contract of insurance qua contract."

18. Though such a contention is advanced, the point on which the Apex Court had rendered a finding in *Sunitha Rathi case (supra)* is that *"There is no such difficulty in the present case in view of the clear finding based on undisputed facts that the accident occurred at 2.20 p.m. and the cover note was obtained only thereafter at 2.55 p.m. in which it was expressly mentioned that the effective date and time of commencement of the insurance for the purpose of the Act was*

10.12.1991 at 2.55 p.m.". In the said decision, the Supreme Court, relied upon the Three Judge Bench decision of the Apex Court in ***National Insurance Co. Ltd. – Vs – Jikubhai Nathuji Dabhi (1997 (1) SCC 66)***.

19. The above view of the Supreme Court has also been followed by the Division Bench of this Court in *Vijayalakshmi's case (supra)*, wherein the Division Bench, after adverting to a series of decisions on the subject issue, has followed the ratio laid down in *Jikubhai's case (supra)* and held that *the coverage commences from the time and date mentioned in the insurance policy, as it is being a Special Contract".*

20. In the case on hand, as stated above, the policy was renewed by paying the premium at 8.48 p.m. on 27.2.2015, but under the contract of insurance, which has been accepted by the insured and the insurer, the risk cover was to start only at 00.00 hours on 28.12.2015. When the insurer and the insured have clearly accepted the point at which the insurer would start covering the risk towards the vehicle in question, this Court cannot add or subtract anything from the said contract to the benefit of the claimants. Admittedly, in the case on hand,

the policy, though issued prior to the accident, however, the coverage starts only after the time the accident took place and in such a scenario, there being no valid policy in the eye of law, covering the risk of the vehicle, the appellant/insurer cannot be mulcted with the liability to pay compensation by indemnifying the owner of the vehicle and, thereafter, recover the same from the insured/owner of the vehicle. ***Accordingly, the first issue is answered in favour of the appellant.***

21. Though it would not be within the knowledge of the claimants as to when the risk is being covered, but mere ignorance would not transpose the burden on the insurance company to accept the liability to pay the compensation by importing the provisions of Sections 147 (5) of the Motor Vehicles Act, as Section 64-VB comes into play. Though it has been the view of the Courts that the network of the insurance company would be able to recover the amount from the owner of the vehicle, however, in all cases, the said ratio cannot be resorted to and it is only in case where the insurance company has some sort of liability attached to it, recourse to such method can be resorted to. In the case on hand, there is no liability attached with the insurance company at the

particular point of time. It is to be pointed out that mere receipt of money towards premium would not fasten the liability on the insurance company, when the contract clearly spells out the time when the coverage would start. Therefore, fastening the liability on the insurance company to pay and, thereafter, recover the amount from the owner of the vehicle would be wholly erroneous.

22. Further, a contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedents for a valid contract. Further, a contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense. (See Colinvaux's Law of Insurance, 7th Edn. Para-2-01). A policy of insurance has therefore to be construed like any other contract. From the above, it is clear that on a construction of the contract in question, it is clear that the insurer had undertaken the liability to indemnify the insured only from a particular point of time, viz., 00.00 hours on 28.2.2015.

23. It is to be pointed out that malpractices have been taken note of by the Supreme Court in ***Sobina Iakai's case (cited supra)*** wherein, it has been held as follows:-

> *"A very large number of cases have come to our notice where insurance policies are taken immediately after the accidents to get compensation in a clandestine manner............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."*

24. In the abovesaid backdrop, the liabilities arising under the contract of insurance would have to be met by the insurance company only if the policy is valid. In the case on hand, there is no policy, which was in force at the point of time when the accident took place. Therefore, the appellant/insurance company would not be liable to satisfy the claim, moreso, when the effectiveness of the insurance policy starts at a later point of time to the accident.

25. Though in *Abhayasing case (supra)*, the Supreme Court had expressed its opinion about the benevolent legislation, to be interpreted in favour of the insured, however, in the same breath, the Supreme Court in the case of ***Deddappa & Ors. – Vs – The Branch Manager, National Insurance Co. Ltd. (2008 (2) TN MAC 138 (SC))***, has held that the Court should not traverse beyond the scheme of the Act and in the said context, held as under :-

> *"27. A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries [AIR 1985 SC 278], this Court held:*
>
> > *"We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.""*

26. In view of the above, when the beneficial legislation has a scheme of its own, this Court cannot travel beyond the scheme and extent the scope of the statute on the pretext of conferring the statutory benefit on third parties, when

they cannot be covered by the scheme. Though the sympathies of this Court are with the claimants, but the fact remains that in the absence of a valid policy, which covers the risk of the vehicle, the insurer cannot be asked to indemnify the insured, and this Court has to necessarily leave the claimants to work out their relief to get the compensation from the 7th respondent/insured, who is the owner of the vehicle, in accordance with law. Therefore, to the said extent where the Tribunal has ordered the appellant to pay the compensation and recover the same from the 7th respondent/insured cannot be sustained and the said portion of the order requires to be set aside. ***Accordingly, the 2nd issue is also answered in favour of the appellant.***

27. Accordingly, this appeal insofar as directing the appellant to pay the compensation to the claimants and recover the same from the 7th respondent/insured is set aside. However, the compensation awarded by the Tribunal to the claimants is confirmed and the claimants are at liberty to take appropriate proceedings for recovering the compensation from the 7th respondent/insured. For the reasons aforesaid, this civil miscellaneous appeal is allowed in part with the aforesaid observations and directions. Consequently,

connected miscellaneous petition is closed. There shall be no order as to costs in this appeal.

01.12.2023

Index : Yes / No

GLN

To

The Special Subordinate Judge
Motor Accident Claims Tribunal
Coimbatore.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY JUDGMENT IN C.M.A. NO.737 OF 2020

Pronounced on

01.12.2023