IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2889 of 2018
and
C.M.P. No.21946 of 2018

M/s.The Oriental Insurance Company Limited
Represented by its Manager,
Extension Counter,
965 Main Road, Opp. Urban Bank,
Bhavani - 638 301 ... Appellant

Vs.

1. Roja

2. P.Rajamani ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1989, against the judgment and decree in M.C.O.P.No.283 of 2014 dated 05.10.2017 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Bhavani.

For Appellant : M/s.P.Kandasamy

For Respondents : Mr.C.Kulanthaivel

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgment and decree in M.C.O.P.No.283 of 2014 dated 05.10.2017 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Bhavani.

2. Though this appeal was filed in the year 2018, the same is not admitted and pending for nearly 5 years. Today, when the matter is taken up for hearing, both the counsel are present.

3. The 1st respondent is claimant. The 2nd respondent is the owner and the appellant is the insurer of the offending bus and they were arrayed as respondents 1 and 2 before the Tribunal.

4. The case of the claimant is that on 09.05.2014, at about 4.45 a.m., the claimant was travelling in the bus bearing Regn. No.TN-23-AH-6666. When the bus was proceeding in Karur-Dindugal National Highways, near Vedachandur, the driver, who drove the bus drove in a rash and negligent manner, dashed behind a lorry bearing Regn. No.KA-01-D-1092.

Due to the said accident, the claimant sustained simple as well as grievous injuries all over the body. Immediately, the claimant was taken to the Government Hospital, Dindigul, and after first aid, she was shifted to Ganga Hospital and then to Richmond Hospital, Coimbatore. Due to the accidental injuries, her right leg was amputated. Besides amputation, she sustained multiple fractures all over the body. The driver of the bus was solely responsible for the accident and a case was registered in Crime No.141 of 2014 on the file of the Vedachandur police station.

5. The claimant filed a claim petition in M.C.O.P.No.283 of 2014 before the Motor Accidents Claims Tribunal, Subordinate Judge, Bhavani, against the 2nd respondent and the appellant herein who are the owner and insurer of the offending bus claiming compensation of Rs.20 lakhs stating that she was aged 45 years at the time of accident and was hale and healthy. She was doing Tailoring work and earning not less than Rs.10,000/- p.m. She was the only bread winner of her family and all her family members were depending upon her income. After the accident, she took treatment as inpatient for three months and still under treatment as outpatient and due to the amputation, she is unable to walk, stand or sit and lift any weight. She

was not able to do any work as in the past and lost her physical strength as well as earning capacity.

6. In order to substantiate the claim, on the side of the claimant, 2 witnesses were examined as P.W.1 and P.W.2 and 12 documents were marked as Ex.P.1 to Ex.P.12. On the side the respondents, 2 witnesses were examined as R.W.1 and R.W.2 and 8 documents were marked as Ex.R1 to Ex.R8.

7. Before the Tribunal, the 2nd respondent/1st respondent was set ex-parte.

8. The Tribunal, after hearing the arguments on either side and considering the materials, awarded a sum of Rs.3,77,000/- as compensation together with interest at 7.5% p.a. from the date of petition to till the date of deposit along with proportionate costs. The appellant/Insurance Company was directed to pay the compensation to the claimant and then to recover the same from the 2nd respondent herein/owner of the vehicle.

9. Challenging the order of the Tribunal, the Insurance Company has filed the present appeal.

10. The learned counsel for the appellant/Insurance company would submit that on the date of accident there was no insurance coverage for the offending bus and there was no relationship of insurer and insured between the appellant/Insurance Company and the 2nd respondent/owner of the offending vehicle. Therefore, the appellant/Insurance Company is not liable to pay any compensation. He further submitted that though all the documents were filed by the appellant/Insurance Company, the Tribunal did not consider those documents. The policy of the 2nd respondent was already cancelled due to dishonouring of the cheque which was issued towards policy premium and therefore, the appellant/Insurance Company is not liable to pay any compensation. The appellant/Insurance Company is not disputing the manner of accident and they are only disputing the liability on the ground that on the date of accident, the offending vehicle was not insured with the appellant/Insurance Company. Therefore, the pay and recovery order passed by the Tribunal is liable to be set aside.

11. The learned counsel for the 1st respondent/claimant would submit that the claimant/1st respondent has also filed an appeal for enhancement of compensation and the same is yet to be numbered.

12. The accident had taken place in the year 2014 i.e. on 09.05.2014 and still the claimant's appeal is pending for one reason or other.

13. The claimant is the injured who had travelled as one of the passengers in the offending bus. The case of the claimant is that due to the rash and negligent driving of the driver of the offending bus, the bus dashed against a lorry and due to that accident, she sustained grievous injuries and immediately she was taken to hospital and took treatment and that she had taken treatment in 3 hospitals. At the time of accident, the claimant was aged 45 years and was doing tailoring work. She was the only bread winner of her family and due to the accidental injuries, one of her leg was amputated, due to which, she could not sit, stand or walk properly and that she had not only lost her job, but also her earning capacity.

14. The contention of the learned counsel for the appellant/Insurance Company is that at the time of accident, the offending bus was not insured with the appellant/Insurance Company. But, a perusal of records shows that the accident took place on 09.05.2014. The policy has been issued with effect from 25.03.2014 and on the same day, premium has been paid by the insured by way of cheque. Though the same was dishonoured on 02.04.2014 as "no such account", the same has been communicated by the Insurance Company only on 15.04.2014 stating that on payment of cheque amount, along with Rs.300/- as bank charges, the coverage would commence again. Subsequently, a reminder has been issued on 09.07.2014 and thereafter, the policy has been cancelled, which is later to the date of accident. Therefore, on the date of accident, the offending vehicle was covered with insurance policy. However, it is between the Insurance Company and the owner of the offending vehicle. It is only a 3rd party claim. When the cheque given for premium was dishonored on 02.04.2014 and if the Insurance Company had communicated the same immediately and thereafter, cancelled the policy for non payment of premium, then it can be assumed that no policy was alive at the time of accident.

15. Before the Tribunal, it was contended and proved by the Insurance Company by examining R.W.1 that the bus involved in the accident was plying beyond the permit and therefore, the Insurance Company is not liable to pay any compensation. The Tribunal, after consideration, held that it was only a technical violation. In **Augustine, V.M. Vs. Ayyappankutty and Ors. reported in 2015 (1) TN MAC 740 (FB) (Ker.),** the High Court of Kerala had held that such technical violation cannot absolve the liability of the insurer and if the said dictum is applied in the present case, the Insurance Company cannot avoid its responsibility on this score".

16. The Tribunal has considered the entire materials and factual matrix and also followed the dictum of the Hon'ble Supreme Court in **United India Insurance Co. Ltd., Vs. Laxmamma & Others reported in 2012 (12) TNMAC 481 (SC),** and held as follows;

> *"The Hon'ble Supreme Court in this Judgment had held that in such occasion, the insured must be informed about the cancellation of policy before accident. Now, let us delve upon the fats on hand. In the present case, the policy has been issued w.e.f.25.03.2014 vide Ex.R1. On the*

same day cheque had been issued vide Ex.R2. The cheque had been dishonored on 02.04.2014 vide Ex.R3. The accident took place on 09.05.2014. The Insurance Company claims to have intimated the cancellation of policy to the insured on 15.04.2004 by relying on Ex.R4. Ex.R4 is an intimation about dishonour of cheque and cancellation of policy. In the same communication it is also intimated to the insured that on payment of cheque amount along with Rs.300/- as bank charges, the coverage would commence again. So, it appears that the policy is not altogether done to death. Further, though the insurance company claims to have intimated the insured about cancellation under the communication dated 15.04.2004, nothing is on record that this communication had been sent to the insured. No postal receipt or acknowledgment is before us to show that this communication was actually sent. Apart from this communication, the insurance company, on 09.07.2014 had sent a communication with a nomenclature as "Reminder-1". The postal receipt and also the returned cover with reference to this intimation is produced. It is under this intimation, the Insurance Company had finally closed the subject. So, this intimation alone can be considered as the proper *intimation as to cancellation of the policy. This intimation is made on 09.07.2014, which is two months after the accident. As there is no proof as to the service of intimation, which is dated 15.04.2014, which is prior to accident, the said intimation cannot be construed as proper intimation. Therefore, the insurance company cannot wash off its hands from liability and the policy has to be construed to be in force at the time of accident. However, as there is permit violation, this Court finds it expedient to permit the Insurance Company to recover the compensation from the insured after paying the same to the victim.*

17. Considering the facts and materials and also the law laid down in the above referred cases, this Court does not find any perversity in the appreciation of evidence and the fixation of liability by the Tribunal.

18. This Court, as an appellate Court and final Court of fact finding, while re-appreciating the entire evidence, also finds that on the date of accident, there was an insurance policy for the offending vehicle and only

subsequent to the date of accident, the policy was cancelled**.** The Tribunal rightly considered the same and fixed the liability on the Insurance Company. However, since there was a permit violation, the Tribunal rightly ordered for pay and recovery. Even if the Insurance Company finds any violation of the policy condition, it would not affect the 3rd party/claimant and therefore, the Insurance Company has to pay the compensation and can recover the same from the owner of the offending vehicle, as directed by the Tribunal.

19. This Court finds no merit in the appeal and the same is liable to the dismissed.

20. As far as quantum is concerned, admittedly, at the time of accident, the claimant was 45 years old and due to the accidental injuries, one of her leg was amputated. Hence, she could not, certainly, do any work on her own as before. Further, she was the only bread winner of her family and due to the accidental injuries, she has become a dependant in the family of non earning members which would have caused not only mental stress, but also, pecuniary loss. The claimant has also incurred medical expenses and underwent long period of treatment. Therefore, considering the facts and materials, the

Tribunal has adopted multiplier method. However, the claimant being a lady with one leg amputated, she could not survive during her life time without any attender, as before the accident, for the remaining life. Therefore, the compensation fixed by the Tribunal is meagre. Since it is stated by the learned counsel for the claimant that the claimant has also filed an appeal for enhancement of compensation, the quantum of compensation fixed by the Tribunal may be decided in that appeal.

21. With the above observations, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

11.09.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1.The Motor Accidents Claims Tribunal,
Subordinate Judge, Bhavani.

2.The Section Officer,
VR Section, High Court, Madras.

P.VELMURUGAN, J

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C.M.A. No.2889 of 2018

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