IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM :

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

C.M.A.No.3698 of 2019
and
CMP.No.21220 of 2019

M/s. National Insurance Co. Ltd.,
Unity Building Annexe, 72, Mission Road,
Bangalore – 27. ...Appellant

Vs.

1. Minor Shamshath Begum
   Rep. By mother Kurshid Begum
   as next friend and natural guardian
2. L.B.Bahagyalatha
3. Muralidhara ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.A.C.T.O.P.No.1359 of 2004 dated 06.09.2013 on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Cuddalore.

For Appellant : Ms.N.B.Surekha

For Respondent : Mr.V.Jaiharisudhan,
for Mr.D.Sreenivasan, for R2
: No Appearance, for R1 & R3

JUDGEMENT

Aggrieved by the judgment and decree passed by the Motor Accidents Claims Tribunal, 1st Additional District Court, Cuddalore in M.A.C.T.O.P.No.1359 of 2004 dated 06.09.2013, the insurer has come up with this Appeal.

2. The case of the Appellant is that, the 1st respondent filed a claim petition claiming a compensation of Rs.10,00,000/- on the ground that, on 08.08.2003 at about 2.15 pm., when the minor 1st respondent/claimant was walking from south to north near the Traveller's Bungalow, Panruti, the 2nd respondent's Toyota Qualis vehicle bearing Regn.No.KA-02-P-5319, insured with the appellant, driven by its driver in a rash and negligent manner, hit the minor 1st respondent, as a result of which, the 1st respondent/claimant sustained grievous injuries all over her body. Thereby, she filed a claim petition claiming compensation for the injuries sustained by her. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.1,05,000/- and fixed the entire liability as against the appellant. Aggrieved by the said order, the appellant has come up with this appeal questioning the liability of the insurer.

3. Learned counsel for the Appellant submitted that, though the policy was issued, however, the cheque given towards the premium for the said policy dated 20.11.2002 was returned dishonoured for insufficient funds on 22.11.2002 and the same was informed to the owner of the vehicle/2nd respondent and the cancellation of policy was also intimated to her, vide Ex.R2, which has been spoken to by R.W1. Whileso, without appreciating the same, the tribunal has erroneously held that the cancellation has not been properly intimated in accordance to the provisions of the Motor Vehilces Act, 1988 (in short 'MV Act') and had awarded the compensation which is perverse and even the liberty to prosecute its remedy to recover the amount from the insured was not extended to the appellant, which cannot be acceded to and the same is liable to be set aside. Accoridngly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the 2nd respondent submitted that, the 2nd respondent sold the vehicle as early as on 13.11.2002 and the accident took place only 08.08.2003 which is much after the date of selling of the vehicle by the 2nd respondent and therefore, the tribunal, after considering all the relevant documents

placed before it, had rightly passed the present impugned award, negativing the stand of the appellant, which does not warrants interference of this Court. Accordingly, he prayed for dismissal of this appeal.

5. Though notice was served on the 1st and 3rd respondent and their names were printed in the cause list, however, none appeared on their behalf. Considering the period of pendency of the appeal, this Court is inclined to dispose of the same based on the materials available on record.

6. A perusal of the impugned award passed by the tribunal reveals that the policy, Ex.P4 was valid from 21.11.2002 to 20.11.2003. However, it is the case of the appellant that the cheque, Ex.R1 which was issued towards the renewal premium was dishonoured and therefore the policy was cancelled and intimation was sent to the owner of the vehicle/ 2nd respondent. Though such a contention is advanced, however, there is no definitive material to show that there is due compliance of the provisions of the MV Act, which mandates that, upon dishonour of the

cheque, it is the duty of the insurer/appellant herein to cancel the policy and inform the same to the owner of the vehicle/2nd respondent with due intimation to the Regional Transport Office (in short 'RTO') and only if both the conditions are complied, it would absolve the insurer of its liability.

7. However, in the present case, though it is claimed that Ex.R2, letter was addressed to the 2nd respondent/owner of the vehicle intimating the cancellation of the policy, however, there is no material to show that, the cancellation of policy was intimated to the RTO, which is a mandate under the MV Act. The Tribunal had made a reference in its order that a letter was sent to the RTO with regard to the dishonour of the cheque and cancellation of policy on 16.07.2009.

8. Such being the case, the requisite provisions with regard to intimation not having been complied with, the policy cannot be said to have been cancelled in the manner known to law. In this regard, useful reference can be had to the decision of the Apex court in the case of ***New***

India Assurance Co. Ltd. – Vs – Rula & Ors. (2000 (3) SCC 195), wherein the Apex Court has held as hereunder:-

"18. We find it hard to accept the submission of the learned Counsel for the insurer that the three-Judge Bench decision in Inderjit Kaur MANU/SC/0842/1998 : (1998) 1 SCC 371 has been diluted by the subsequent decisions in Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151 and Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595. Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151 and Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595 turned on the facts obtaining therein. In the case of Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151, the claim was by the legal heirs of the insured for the damage to the insured vehicle. In this peculiar fact situation, the Court held that when the cheque for premium returned dishonoured, the insurer was not obligated to perform its part of the promise. Insofar as Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595 is concerned, that was a case where the accident of the vehicle occurred after the insurance policy had already been cancelled by the insurance company.

19. In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. <u>In other words, where the</u>

policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored 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." *(Emphasis Supplied)*

9. From the above ratio laid down, it clearly transpires that only where the cheque gets dishonoured and before the accident of the vehicle occurs, the insurance company cancels the policy of insurance and sends intimation to the owner and the Regional Transport Officer, 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.

10. The above said ratio has been followed by the Tribunal while rejecting the case of the appellant denying its liability for paying the compensation and had accordingly directed payment of compensation which cannot be held to be erroneous or perverse or unreasonable, since

the letter was sent to the RTO with regard to the dishonour of the cheque and cancellation of policy only on 16.07.2009, which is much after the date of accident and accordingly, no interference is warranted with the findings recorded by the Tribunal.

11. Further, it is pertinent to note that, when the claim petition was filed in the year 2004, the 1st respondent was minor, aged about 14 years and now, the 1st respondent would have attained majority. Though no application has been taken out to declare the 1st respondent as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares 1st respondent as major and discharges his guardian M/s.Kurshid Begum from the guardianship. The Registry shall carry out the necessary amendments.

12. For the reasons aforesaid, this Appeal stands dismissed, confirming the impugned award passed by the Tribunal. The appellant-insurance company is directed to deposit the compensation awarded by the Tribunal to the credit of M.A.C.T.O.P.No.1359 of 2004 along with interest at the rate of 7.5% per annum from the date of claim petition till

the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of two weeks (2) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the 1st respondent through RTGS within a period of two (2) weeks thereafter. Further, the appellant/insurance company is at liberty to workout its remedy as against the owner of the vehicle in the manner known to law. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous petition is closed.

16.11.2023

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Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

1.The Motor Accidents Claims Tribunal, 1st Additional District Court, Cuddalore.

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

M.DHANDAPANI, J.

skt

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