IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2658 of 2021

and C.M.P. No.15193 of 2021

United India Insurance Co. Ltd.,
Rep. by its Divisional Manager,
Nethaji Road, Manjakuppam,
Cuddalore - 01. ... Appellant / Respondent

Vs.

M. Nirmala ... Respondent / Petitioner

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 27.10.2014 made in M.C.O.P. No. 25 of 2011 on the file of the Special Sub Judge, Motor Accident Claims Tribunal, Cuddalore.

For Appellant : Mr. MJ. Vijayraaghavan

For Respondent : Mr. G.R. Hari (for M/s. Amuthavalli)

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the insurance company challenging the Judgment and decree made in M.C.O.P. No. 25 of 2011, dated 27.10.2014 on the file of the Special Sub Judge, Motor Accident Claims Tribunal, Cuddalore, wherein the Tribunal has awarded compensation for a sum of Rs.60,775/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. On 22.10.2003, at about 11:30 AM, a Mahindra Van bearing Registration No.TN-31-V-6665, which belongs to the claimant was driven by the claimant's driver towards Poonamalle in the Ponnamalle National Highway, at that time, a cyclist has suddenly entered the middle of the road, and in order to avoid accident, the van driver has turned the vehicle on the right side, hit on the concrete centre median of the road, thereby the van has subjected to serious damage. Therefore, the claimant has spent a huge sum of money for repairing the said van and the van was not used for further six

months due to carrying out of its repair work. The said van was insured with the respondent – insurance company and the insurance policy was in force at the time of accident, hence for the expenditure incurred for repairing of the vehicle and for the loss of income during the repair period and mental agony, the claimant has filed claim petition seeking compensation for a sum of Rs.3,00,000/- from the respondent – insurance company.

4. The respondent – insurance company has filed a counter and stated that the insurance policy was taken for the period from 30.01.2003 to 29.01.2004 by one Seethalakshmi and the said Mahindra Van was sold to the claimant on 17.02.2003 and by Section 144 of the Motor Vehicle Act, the claimant should have intimated the same to the insurance company within 14 days from the date of transfer of registration of the vehicle but the claimant has not followed the same. The claimant has also not come forward to file any application for change over of insurance policy in her name after purchasing the said Mahindra van. The claimant also approached Consumer Court in Cuddalore District and filed a case in O.P. No.6 of 2010 and the same was subsequently withdrawn the same on 12.10.2010 and thereafter

this claim petition was filed.

5. The Tribunal after considering the evidences placed on record and merits of the case has held that the claimant is entitled to Rs.60,775/- along with interest @ 7.5% per annum for the own damages caused to the vehicle.

6. Aggrieved over the award, the insurance company has filed this appeal challenging the liability fixed on them to pay compensation to the claimant for the own damages caused to her vehicle.

7. The learned counsel appearing for the insurance company submitted that the insurance policy stands in the name of the original owner namely Seethalakshmi and there is no contract between the claimant and insurance company herein, but the Tribunal has not properly appreciated the evidence placed on record and fixed the liability on the insurance company to pay compensation under the head 'own damages' to the claimant, hence prays to set aside the award of the Tribunal.

8. The learned counsel for the claimant appeared through Video Conferencing, submitted that originally the insurance company has approached this Court in the year 2017 itself and filed condone delay petition of 938 days and after allowing the same by this Court, this appeal was numbered. He has also further submitted that the delay period was not properly calculated, hence he preferred a review petition and seek further more time for the same.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. On perusal of the record, it shows that before condoning the delay of 938 days in C.M.P. No.12088 of 2021, the insurance company also earlier filed another petition in C.M.P. No.11629 of 2021 to condone the delay of 925 days, which was also allowed by this Court. After filing of vakalat by the learned counsel appearing for the respondent, there was no representation on the side of the respondents, hence this Court allowed the petition for condoning the delay based on the merits of the case. Hence, the contention of the claimant that claim petition is barred by limitation since

there was no condonation of delay and there is no scope for reviewing the Order of numbering the appeal on the ground of wrong calculation of delay in filing appeal.

11. The Apex Court judgment in ***Complete Insulations (P) Ltd., Vs. New India Assurance Co. Ltd., [(1996) 1 SCC 221]***, has considered the legal implications of non transfer of the insurance policy in the name of the purchaser is held in paragraph 8, 10 and 11 as follows:

> *"8. In Kondaiah's case (supra) the vehicle in question was transferred but not the insurance policy. The policy or the certificate was not transferred to the vendee. The victims of the accident filed a claim before the Motor Accident Claims Tribunal. Broadly four contentions were considered, namely, (i) whether the transfer of the vehicle to the purchaser is not complete till the vehicle is registered in the name of the transferee (ii) whether on transfer in the absence of the transfer of the insurance policy, the policy lapses (iii) whether it lapses even against the third party (iv) whether the Insurance Company can validly contend that the insurance policy had lapsed. The Full Bench held that under the Sale of Goods Act the sale is complete on payment of the consideration and delivery of the vehicle, regardless of transfer of registration in the name of the transferee. On the second and third contentions it was held that notwithstanding the non transfer of the insurance policy, the liability qua third party subsists in view of Section 94 and 95 of the Old Act. The last point regarding right of insurance company to raise the plea of the policy having lapsed is not of any relevance to us. In the separate*

judgment of Kodandaramayya, J. relied upon by the National Commission, it was pointed out that the 'third party' referred to in Section 95 did not include a transferee who was not a party to the original contract of insurance and, therefore, the transferee or vendee could not claim any benefit from the insurance company for damage to his person or the vehicle.

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10. Section 157 appears in Chapter XI entitled 'Insurance of Motor Vehicles against Third Party Risks' and comprises Sections 145 to 164. Section 145 defines certain expressions used in the various provisions of that chapter. The expression 'Certificate of Insurance' means a certificate issued by the authorised insurer under Section 147(3). 'Policy of Insurance' includes a certificate of insurance. Section 146(1) posits that 'no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this chapter'. Of course this provision does not apply to vehicles owned by the Central or State Government and used for Government purposes not connected with any commercial enterprise. This provision corresponds to Section 94 of the Old Act. Section 147 provides that the policy of insurance to be issued by the authorised insurer must insure the specified person or classes of persons against any liability incurred in respect of death of or bodily injury to any person or damage to any property of a third party as well as against the death of or bodily injury caused to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. This provision is akin to Section 95 of the Old Act. It will be seen that the liability extends to damage to any property of a third party and not damage to the property of the owner of the vehicle, i.e. the insured. Sub-section (2) *stipulates the extent of liability and in the case of property of a third party the limit of liability is rupees six thousand only. The proviso to that Sub-section continues the liability fixed under the policy for four months or till the date of its actual expiry, whichever is earlier. Sub-section (3) next provides that the policy of insurance shall be of no effect unless and until the insurer has issued a certificate of insurance in the prescribed form. The next important provision which we may notice of is Section 156 which sets out the effect of the certificate of insurance. It says that when the insurer issues the certificate of insurance, then even if the policy of insurance has not as yet been issued, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured a policy of insurance conforming in all respects with the description and particulars stated in the certificate. It is obvious on a plain reading of this provision that the legislature was anxious to protect third party interest. Then comes Section 157 which we have extracted earlier. This provision lays down that when the owner of the vehicle in relation whereto a certificate of insurance is issued transfers to another person the ownership of the motor vehicle, the certificate of insurance together with the policy described therein shall be deemed to have been transferred in favour of the new owner of the vehicle with effect from the date of transfer. Sub-section (2) requires the transferee to apply within fourteen days from the date of transfer to the insurer for making necessary changes in the certificate of insurance and the policy described therein in his favour. These are the relevant provisions of Chapter XI which have a bearing on the question of insurer's liability in the present case.*

11. There can be no doubt that the said chapter provides for compulsory insurance of vehicles to cover third party risks. Section 146 forbids the use of a vehicle in a public place unless there is in force in relation to the use of that vehicle a policy of insurance complying with the *requirements of that chapter. Any breach of this provision may attract penal action. In the case of property, the coverage extends to property of a third party i.e. a person other than the insured. This is clear from Section 147(1)(b)(i) which clearly refers to 'damage to any property of a third party' and not damage to the property of the 'insured' himself. And the limit of liability fixed for damage to property of a third party is rupees six thousand only as pointed out earlier. That is why even the claims Tribunal constituted under Section 165 is invested with jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, or damage to any property of a third party so arising, or both. Here also it is restricted to damage to third party property and not the property of the insured. Thus, the entire chapter XI of the New Act concerns third party risks only. It is, therefore, obvious that insurance is compulsory only in respect of third party risks since Section 146 prohibits the use of a motor vehicle in a public place unless there is in relation thereto a policy of insurance complying with the requirements of Chapter XI. Thus, the requirements of that chapter are in relation to third party risks only and hence the fiction of Section 157 of the New Act must be limited thereto. The certificate of insurance to be issued in the prescribed form (See Form 51 prescribed under Rule 141 of the Central Motor Vehicles Rules, 1989) must, therefore, relate to third party risks. Since the provisions under the New Act and the Old Act in this behalf are substantially the same in relation to liability in regard to third parties, the National Consumer Disputes Redressal Commission was right in the view it took based on the decision in Kondaih's case because the transferee-insured could not be said to be a third party qua the vehicle in question. It is only in respect of third party risks that Section 157 of the New Act provides that the certificate of insurance together with the policy of insurance described therein "shall be deemed to have been transferred in favour of the person to whom the motor vehicle is*

> *transferred". If the policy of insurance covers other risks as well, e.g., damage caused to the vehicle of the insured himself, that would be a matter falling outside Chapter XI of the New Act and in the realm of contract for which there must be an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle. In the present case since there was no such agreement and since the insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not liable to make good the damage to the vehicle. The view taken by the National Commission is therefore correct."*

12. In this case, the claimant himself has admitted before the Tribunal that as per the insurance policy the contract exists only between the insurance company and one Seethlakshmi and there was no contract established between the claimant and the insurance company herein. Ex.P.4 – insurance policy was misinterpreted by the Tribunal, and held that while the insurance policy was in force, it is the duty of the insurance company to pay the compensation to the claimant and also held that the 14 days time limit under Section 156 of the Act has not barred the claimant claiming compensation. This Court is of the view that the above observations of the Tribunal was made without adverting into the judgment of the Apex Court in ***Complete Insulations (P) Ltd., Vs. New India Assurance Co. Ltd.,*** cited

supra and in view of the fact that the insurance policy was not transferred within the period of 14 days from the date of transfer of ownership of the vehicle, the claim made by the claimant, who is the owner of the vehicle for claiming compensation for 'own damage' is not permissible. Accordingly, the award passed by the Tribunal is not in accordance with law and the same is hereby set aside.

13. In the result, this Civil Miscellaneous Appeal is allowed. Consequently, connected civil miscellaneous petition stands closed. The appellant – insurance company is given liberty to withdraw the amount deposited, if any. No cost.

15.12.2023

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

To:
1. The Special Sub Judge,
   Motor Accident Claims Tribunal,
   Cuddalore.

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

K. RAJASEKAR, J.

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