IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM :

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

C.M.A.No.2157 of 2019
and
CMP.No.8762 of 2019

ICICI Lombard General Insurance Company Limited,
Vigheshwar Cresta,
No.1095, Avanashi Road, Pappanaickenpalayam,
Coimbatore – 641 037. ...Appellant

Vs.

1. V.Manikandan
2. S.Suresh Kumar
3. G.Mahalingam ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 23.03.2018 made in M.C.O.P.No.104 of 2013 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Coimbatore.

For Appellant : Ms.R.Sree Vidhya

For Respondents : Mr.M.Vijaya Ragavan, for R1
: R2-Died
: No Appearance, for R3

JUDGEMENT

Aggrieved by the Judgement and Decree dated 23.03.2018 made in M.C.O.P.No.104 of 2013 on the file of the Motor Accident Claims Tribunal Motor Accident Claims Tribunal (Chief Judicial Magistrate), Coimbatore, the appellant 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.15,00,000/-, alleging that, on 06.07.2008, at about 8.30 pm., when the 1st respondent was riding Bajaj Boxer Motor Cycle bearing Regn.No.TN-37-AH-2047 from East to West direction on Thondamuthu to Coimbatore Main Road, near Pudhupalayam Bus stop, a Maxi cab Chevrolet Tavera Bearing Regn.No.TN-43-B-3297, owned by the 3rd respondent and insured with the appellant/insurance company, driven by its driver/the 2nd respondent herein came from the opposite direction in a rash and negligent manner and dashed against the 1st respondent, as a result of which, the 1st respondent sustained grievous injuries all over his body and got admitted in the hospital for which the claim petition was filed. After contest, the

tribunal, vide impugned judgment, awarded a compensation of Rs.5,83,150/- in favour of the 1st respondent payable by the appellant. Aggrieved with the said order, the present appeal has been preferred by the appellant questioning the liability of the insurer.

3. Learned counsel appearing for the appellant submitted that, cover note GF 633021 mentioned in the claim petition is incorrect, and even though it was subsequently amended as GF 6330291, the said amended cover note GF 6330291 was issued to some other vehicle bearing Regn.No.TN-38-AK-4151 Goods carrying vehicle TVL.Nithya Industries, Coimbatore for the period from 04.12.2007 to 03.12.2008 and not for the offending vehicle bearing Regn.No.TN-43-B-3297, which clearly shows that the 1st respondent with an ill-motive made a claim as against the appellant. When it is clearly proved that both the cover note initially mentioned in the claim petition and the subsequently amended cover note does not in any way insured the offending vehicle mentioned in the claim petition, it is the duty of the 1st respondent/claimant to furnish the exact policy details of the offending vehicle, against which the entire claim has been made. Further, the major contention of the

appellant/insurance company is that, at the time of occurrence of the alleged accident, the said Maxi cab Chevrolet Tavera Bearing Regn.No.TN-43-B-3297 was not insured with the appellant and thereby no compensation can be claimed from the appellant and they should necessarily be exonerated. She further submitted that, though the 3rd respondent / the owner of the offending vehicle issued a Cheque bearing No.140776 for the premium value of Rs.12,952/- vide proposal No.55873982, however, the said cheque returned unpaid by the bankers (dishonoured) and therefore the appellant could not process the policy and even the said amount does not relate to the policy cover note mentioned in the claim petition and it is a cheque for premium amount of policy for the period from 08.01.2009 to 07.01.2010 and not relatable to the accident period. In the absence of any valid policy at the time of accident, making the appellant liable to pay the entire compensation in favour of the 1st respondent is wholly unsustainable. While so, without considering any of the above said facts, the Tribunal had fastened the entire liability as against the appellant/insurance company, which cannot be acceded to. Accordingly, she prayed for appropriate orders.

4. Learned counsel appearing for the 1st respondent submitted that, the above said accident happened wholly due to the negligence on the part of the 2nd respondent/driver of the appellant insured vehicle, for which a FIR came to be registered as against the 2nd respondent, which was not disputed by the appellant. Though it is the claim of the appellant that neither the initial nor the amended cover note Number relates to the offending vehicle mentioned in the claim petition and the same was issued to some other vehicle and the said vehicle has no connection to the alleged accident, however, the 1st respondent/claimant being an innocent victim had only enumerated the details as found in the MVI report, marked as Ex.P4. The 1st respondent had rightly given the registration number of the offending vehicle and being a common man, he was unable to get the policy details of the offending vehicle. Further, if the appellant/insurance company objects any of the submission made by the claimant, automatically the burden of proof rests on the shoulder of the appellant/insurance company to prove its case and it is the responsibility of the appellant to establish before this Court with regard to the non-existence of the policy relating to the offending vehicle, which

was not done so by the appellant. Further, though the appellant claim that the offending vehicle was not insured with the appellant and at the time of the accident, there was a policy in existence, as the cheque issued by the 3rd respondent/the owner of the offending vehicle was returned unpaid, however, not even a single documentary evidence was produced by the appellant either before this Court or before the tribunal to show that proper intimation was given to the 3rd respondent with regard to the bouncing of the cheque for premium amount of the policy. Hence, in the absence of any proof, the tribunal, vide impugned award had rightly fastened the entire liability as against the appellant/insurance company, which does not warrant any interference of this Court and accordingly, he prayed for dismissal of this appeal.

5. Heard the learned counsel appearing for the appellant as well as the 1st respondent and perused the materials available on record.

6. The major issue that arises for consideration in the present appeal is whether the appellant being the insurer of the offending vehicle, is liable to pay compensation to the 1st respondent.

7. It is the claim of the appellant/insurance company that, the cover note number mentioned in the claim petition initially, which was amended subsequently pertains to some other vehicle bearing Regn.No.TN-38-AK-4151 Goods carrying vehicle TVL.Nithya Industries, Coimbatore for the period from 04.12.2007 to 03.12.2008 and not for the offending vehicle bearing Regn.No.TN-43-B-3297, and the said Goods carrying vehicle is in no way connected with the above said accident and the offending vehicle, at the material point of time, was not insured with the appellant at the time of accident and with an ill-motive the 1st respondent/claimant has given wrong information in order to misguide the Court by manipulating the cover note.

8. Even otherwise, the appellant has a separate website called Vahan website to obtain the details and the appellant ought to have produced necessary documents to disprove the contentions of the 1st respondent/claimant, which was not done so by the appellant/insurance company in the present case and except the registration number of the offending vehicle, the 1st respondent, being a innocent victim was unable

to obtain the other necessary policy details of the offending vehicle, which cannot be found fault with.

9. Though it is the continuous stand of the appellant that, even the dishonored cheque for payment of premium amount of the policy of offending vehicle pertains to the period from 08.01.2009 to 07.01.2010 and not for the period of accident, however, no steps have been taken by the appellant to prove that the offending vehicle was not insured with it at the time of accident or previously by placing materials to show that the policy, which is sought to be obtained from the appellant is a fresh policy and is not a renewal policy. Further, as rightly pointed out by the learned counsel appearing for the 1st respondent, no document was submitted by the insurance company to show that the details of dishonor / bouncing of cheque and non-processing of the policy were intimated to the 3rd respondent/owner of the offending vehicle, either before the Tribunal or before this Court.

10. Hence, the tribunal cannot come to a exact conclusion that whether the offending vehicle was insured with the appellant/insurance

company or not? prior to 08.01.2009, more particularly during the period when the accident had happened. In the absence of any material by the appellant to establish that the offending vehicle was sought to be insured with it for the first time and was not insured earlier in point of time, the presumption was drawn by the Tribunal that the offending vehicle was insured with the appellant at the time of accident and thereby, the tribunal fastened the entire liability as against the appellant/insurance company. The reasoning adopted by the Tribunal for coming to the said conclusion is just and reasonable and is in no way perverse warranting interference.

11. For the reasons aforesaid, the appeal deserves to be dismissed and, accordingly, this appeal is dismissed. The appellant insurance company is directed to deposit the entire compensation as awarded by the Tribunal along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs, less, the amount, if any already deposited, within a period of four (4) weeks 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/claimant through RTGS within a period of two (2) weeks thereafter. Further, liberty is granted to the appellant/insurance company to workout the remedy in the manner known to law, as against the 3rd respondent/owner of the vehicle, if the appellant has appropriate documents to show that the vehicle in question was not insured with it at the time of the accident. There shall be no order as to costs in this appeal. Consequently, the connected Miscellaneous petition is closed.

07.11.2023

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

To

1.The Motor Accident Claims Tribunal (Chief Judicial Magistrate),
Coimbatore.

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

M.DHANDAPANI, J.

skt

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