



C.M.A(MD)No.1245 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1245 of 2009

The National Insurance Company Limited,
Represented by its Branch Manager,
Branch at Nagercoil Post and Village,
Agastheeswaram Taluk,
Kanyakumari District.

... Appellant/3rd Respondent

Vs.

1.Rema

2.Minor.Jothika

3.Minor.Jenish

*(Minor respondents 2&3 are represented by
their mother and guardian R1)*

4.Kaliamma

... Respondents/Petitioners

5.Robert Singh

... Respondent/1st Respondent

6.Josephraj

... Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the order and decree, dated 30.10.2008 passed in M.C.O.P.No.57 of 2005 on the file of the Motor Accident Claims Tribunal, Sub Court, Padmanabhapuram to allow this appeal.



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For Appellant : Mr.J.S.Murali
For R1,R4&R6 : No Appearance
For R2&R3 : Mr.T.Selvan
For R5 : Mr.M.Suresh

JUDGMENT

The present appeal has been filed by the appellant insurance company challenging the award of pay and recovery passed by the Motor Accident Claims Tribunal, Padmanabhapuram in M.C.O.P.No.57 of 2005.

2. According to the claimants, the deceased aged about 27 years, was working as cleaner and while he was moving as a pedestrian at about 07.45p.m on 12.08.2003, the mini bus belonging to the 1st respondent was driven in a rash and negligent manner and dashed against the deceased person in which he succumbed to the injuries. The claimants have prayed for a sum of Rs.8,00,000/- as compensation.

3. The owner of the mini bus had remained ex parte and the insurance company has filed a counter contending that towards payment of premium for the policy, the owner of the vehicle had issued a cheque on 29.11.2002 which was dishonoured on the same day when presented



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to the bank. On 20.12.2002, the insurance company has sent a notice to the insured person cancelling the insurance policy and it was also acknowledged by the insured person. Therefore, on the date of accident, there was no insurance at all and they should be exonerated.

4. The tribunal after considering the oral and documentary evidence, came to a conclusion that even though the policy was cancelled, unless if the said policy document is recovered from the insured person, the company is liable to satisfy the award and thereafter, recover the same from the insured person. The tribunal proceeded to fix the quantum of compensation at Rs.2,36,000/-. Challenging the said award, the present appeal has been filed by the insurance company.

5. The learned counsel appearing for the appellant had contended that the owner of the vehicle had issued a cheque on 29.11.2002 towards payment of premium which was dishonoured by the bank on the same day. The said fact was intimated to the insured person under Exhibit R.4 on 20.12.2002. The insured person has also acknowledged the same under Exhibit R.6, dated 28.12.2002. A notice was also issued to Regional Transport Officer from the insurance company under Exhibit R. 5 on 20.12.2002. Therefore, 8 months prior to the accident, the insurance



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the insured person and the Regional Transport Officer. Therefore, the company should have been completely exonerated from the liability.

However, the tribunal on an erroneous appreciation of law rendered by the Hon'ble Supreme Court, has proceeded to pass an award of pay and recovery. Hence, he prayed to allow the appeal and to exonerate the company from liability.

6. The learned counsel appearing for the 2nd respondent in the claim petition who is the registered owner of the mini bus had contended that he had sold the vehicle on 24.01.2001 in favour of one Godwin by an agreement and the vehicle was surrendered to the said Godwin. Though the 2nd respondent had applied for transfer in the name of the purchaser, the authorities have failed to record the transfer. In the meantime, the said Godwin had sold the mini bus to one Arul Selvan.. During the time of the accident, the mini bus was in the care and custody of said Arul Selvan.

7. The learned counsel appearing for the 2nd respondent in the claim petition has further contended that cheque under Exhibit R.1 was issued only by the said Arul Selvan and not by him. Therefore, the insurance company was not right in issuing a notice to him under Exhibit

R.4. He further contended that after the accident, the said Arul Selvan



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has entered into an agreement with him on 07.03.2005 to the effect that the 2nd respondent is not liable for the payment of compensation. Hence, he prayed for passing appropriate orders.

8. I have carefully considered the submissions made on either side and perused the material records.

9. The issue that arises for consideration is that whether the cheque that was issued by the registered owner of the vehicle for renewal of the policy was honored before the accident or not. A perusal of Exhibit R.1 indicates that one Arul Selvan has issued the said cheque and admittedly, the said cheque has been dishonored for insufficiency of funds. Though the owner of the vehicle contend that he had sold the vehicle on 24.01.2001, the name of the purchaser has not been entered into either in the R.C book or in the insurance policy. Even though the registered owner contends that he had submitted an application for transfer of name, no attempt has been made on the part of the registered owner to examine any one from the R.T.O office to establish the submission of the transfer form.

10. In the counter, the registered owner has contended that the said



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Arul Selvan has executed an agreement on 07.03.2005 that he alone is responsible for the payment of compensation and not the 2nd respondent.

However, the registered owner has not chosen to produce the said agreement or examine the said Arul Selvan relating to the said fact. The registered owner has not taken any steps to establish that he has sold the vehicle to one Godwin and thereafter, the said Godwin to Arul Selvan. He has also not examined the R.T.O officials to establish the submission of transfer form or the agreement said to have been executed by the current owner, namely Arul Selvan. Therefore, the owner of the vehicle has not discharged his burden relating to the transfer of vehicle.

11. In view of the judgment of the Hon'ble Supreme Court that the registered owner alone is liable to pay compensation unless the transfer of the vehicle properly is entered into in the R.C book, this Court is not inclined to accept any one of the contentions of the registered owner of the mini bus. The principle of pay and recovery can be invoked only when there is an insurance policy. In the present case, admittedly, the cheque that was issued towards payment of premium was dishonored on 29.11.2002 and the registered owner was intimated on 20.12.2002. The said intimation was also acknowledged by the registered owner on 28.12.2002. The cancellation of the policy was also informed by the

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insurance company to the R.T.O officials on 20.12.2002. 8 months



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thereafter, the accident has taken place on 12.08.2003. Therefore, on the date of accident, there was no insurance policy covering the offending vehicle. When there is no coverage, the tribunal ought not to have invoked the principle of pay and recovery. Therefore, the order of pay and recovery issued by the tribunal is hereby set aside. However, this Court is inclined to confirm the quantum of award. The registered owner of the vehicle has not challenged the pay and recovery order. Therefore, the aggrieved person is only the registered owner of the vehicle. The liability to pay compensation is mulcted upon the 2nd respondent in the claim petition, namely the owner of the mini bus.

12. In view of the above said deliberations, the appeal is allowed and the liability to pay the compensation fixed by the tribunal is shifted to the 6th respondent in the appeal/2nd respondent in the claim petition.

13. With the above said observations, this Civil Miscellaneous Appeal stands allowed. No costs.

19.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To



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- 1.The Motor Accident Claims Tribunal,
Sub Court,
Padmanabhapuram.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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Judgment made in
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