BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.08.2023

Pronounced on : 29.08.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.1407 of 2011
and
M.P.(MD)No.1 of 2011

The TATA AIG General Insurance Co. Ltd.,
Commander-in-Chief Road
Ethiraj Salai, Egmore
Chennai 600 008. ... Appellant/ 2nd Respondent

Vs.

1. P.Antonysamy ... Respondent/ Petitioner

2. S.Balamurugan

3. V.Vijayavel @ Suresh ... Respondents/ Respondents 1&3

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 20.01.2011 made in M.C.O.P.No.251 of 2010 on the file of Motor Accidents Claims Tribunal (Addl. District Judge/Fast Track Court-II), Tuticorin and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.J.S.Murali

For R1 : Mr.S.Sivathilakar

For R2 & R3 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.251 of 2010 dated 20.01.2011 on the file of the Motor Accident Claims Tribunal/Additional District Court/Fast Track Court No.II, Thoothukudi.

2. The appellant/insurer, who was made liable to pay compensation of Rs.77,000/- (Rupees Seventy Seven Thousand only) with interest at 7.5% per annum to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 26.05.2010, challenged the liability mulcted on it.

3. The learned counsel appearing for the appellant/insurer would submit that the appellant/insurer has proved beyond doubt that there was no insurance coverage for the vehicle involved in the accident at the

material time of accident, that the initial burden of proof of the insurance coverage relating to the vehicle involved in the accident is only on the first respondent/claimant and the burden gets discharged and shifted to the insurance company only after discharging the said burden by the first respondent/claimant, that the first respondent/claimant has not furnished proof of coverage of the insurance policy for the vehicle involved in the accident, that the appellant/insurer has sent a legal notice to the second respondent/owner of the vehicle calling upon him to produce the proof of coverage of policy of insurance as on the date of accident and the same was received by the wife of the second respondent/owner of the vehicle, that service of notice on the wife of the insured would amount to service on the insured himself and that the Tribunal, without considering the above material aspects, has erred in mulcting liability on the appellant/ insurer.

4. The only point that arises for consideration is as to whether the Tribunal erred in mulcting liability on the appellant/insurer, despite showing that there was no insurance coverage for the vehicle involved in the accident?

5. In the claim petition, the first respondent/claimant has stated that the accident had taken place due to the rash and negligent riding of the third respondent/driver, that the second respondent is the owner of the bike bearing Registration No.TN-69-Q-0483 and that the appellant is the insurer of the said vehicle and as such, all the respondents therein are liable to pay compensation to the first respondent/claimant.

6. In the claim petition, while describing the appellant/insurer in the address portion, it has been mentioned 'Policy No. not known, effect from 29.05.2009 – 28.05.2010. The first respondent/claimant, in column 16th of the claim application i.e., name and address of the insurer of the vehicle, the appellant/insurer's name has been shown. Except the above, the first respondent/claimant has not furnished any other particulars with regard to the insurance coverage of the vehicle involved in the accident.

7. The appellant/insurer, in their counter statement, has taken a specific plea that the two wheeler bearing Registration No.TN-69-Q-0483 has not been insured with the appellant/insurer on the date of accident i.e., on 26.05.2010 and insurance coverage was not in force at that time and

that since there is no contractual obligation between the second respondent/owner of the vehicle and the appellant/insurer, the appellant/ insurer could not indemnify for any loss or bodily injury caused out of and in the use of the said vehicle and that therefore, the claim as against the appellant/insurer has to be dismissed with heavy compensatory cost. The appellant/insurer, in their counter statement, has further stated that they came to know from their investigation that no policy copy was available with the police records, that the first respondent/claimant has casually mentioned the name of Tata AIG Insurance Company policy in MVI report without policy number and that the policy number was also not mentioned in the claim petition.

8. The appellant/insurer, in order to prove their said defence, has examined their Assistant Manager Mariappan as R.W.1 and he would reiterate the contention raised in the counter statement that on the date of accident i.e., on 26.05.2010 the second respondent's vehicle was not at all insured with the appellant/insurer, that there was no contract between the second respondent/owner of the vehicle and the appellant/insurer at that time and that therefore, the second respondent/owner of the vehicle alone is liable for the claim.

9. The appellant/insurer has produced the copy of the legal notice along with postal receipt sent to the second respondent/owner of the vehicle dated 05.01.2011 under Ex.R.1 calling upon him to furnish the particulars of the vehicle including the insurance policy and the postal acknowledgement card for the receipt of Ex.R.1-notice under Ex.R.2. Subsequently, R.W.1, by recalling himself, has produced the copy of the notice sent to the second respondent/owner of the vehicle for production of records relating to the vehicle involved in the accident under Ex.R.3, which came to be exhibited with the objections of the first respondent/ claimant.

10. It is pertinent to note that the second respondent/owner of the vehicle and the third respondent/driver of the vehicle involved in the accident had remained *ex parte* before the Tribunal.

11. As rightly pointed out by the learned counsel appearing for the appellant/insurer, the first respondent/claimant, in his evidence before the Tribunal, has also not chosen to furnish the particulars of the insurance policy. When the first respondent/claimant-P.W.1 was in witness box, it

was specifically suggested that since the offending vehicle was not insured with the appellant/insurer, the second respondent/owner of the vehicle alone is liable to pay compensation and that the first respondent/claimant alone is duty bound to prove the insurance coverage, but the same were denied by the first respondent/claimant.

12. The Hon'ble Division Bench of this Court in ***United India Insurance Company Limited, Chennai Vs. R.Venkatesan and another*** reported in ***2003 (1) LW 31,*** considering the various judgments of other High Courts as well as the mandatory provisions stipulated in the Motor Vehicles Act and the Tamil Nadu Motor Vehicles Accident Rules has formulated the points for strict compliance of the parties concerned and the relevant passage is extracted hereunder:-

> *"19. .....*
>
> *v) The claimants are duty bound to furnish correct registration number of the vehicle, full insurance particulars as furnished by the police officer/investigation officer. If details are wanting at the time of filing of the claim petition, it is the duty of the claimants to ascertain all those particulars either from the police officer/investigation*

officer or from the Motor Vehicle Inspector of the Transport Department or from the Tribunal having jurisdiction and mention those particulars in the claim petition.

vi) If the insurance company feels that the particulars furnished in the claim petition are not correct or not sufficient, it shall ascertain the necessary details from the police officer/investigation officer concerned or from the office of the Motor vehicle Inspector, and prove its case by positive evidence."

13. Considering the above clauses, it is clearly evident that the first respondent/claimant is duty bound to furnish the particulars about the insurance coverage of the vehicle involved in the accident.

14. The Orissa High Court in ***Divisional Manager, National Insurance Co. Ltd., Vs. Ramakrishna Das*** reported in ***1993 ACJ 668*** has held that since the claimant has failed to mention the policy particulars and in absence thereof, the insurance company could neither deny nor confirm having insured the vehicle. In ***New India Assurance Co. Ltd., Vs. Shaik Ashabi*** reported in ***1992 ACJ 811,*** the Andhra Pradesh High Court has held as follows;

"4. .... It is true that the claimants have to establish by adducing evidence that there is a valid policy on that day. If they are able to adduce evidence, the burden shifts on the insurance company. The insurance company is at liberty to prove that the policy is not in force or the policy might have been expired. In this case, the vehicle has been inspected and the Motor Vehicles Inspector mentions a particular number, the date of commencement of the policy and the date of expiry of that policy. So we cannot expect the claimants to direct the owner to produce the policy particulars when the owner has turned hostile. When two dates have been given, that is the commencement date and the expiry date, and the number of the policy, it is the duty of the insurance company to prove that on such commencement or expiry dates the policy was not given by that branch."

15. In ***New India Assurance Co. Ltd., Vs. Anga Chinni Babu*** reported in ***1992 ACJ 281,*** the Andhra Pradesh High Court has held that if the claimants have not produced any material to show that there is policy at that point of time, the burden can never shift and that their duty is only to show that a particular vehicle involved in the accident is insured with a particular company with a particular policy number and if that material has been supplied by the claimants, it is the duty of the insurance company to

produce the evidence to the effect whether that policy was there on them or whether a wrong policy has been given or whether the policy mentioned in the O.P. belongs to some other vehicle.

16. A learned Judge of this Court in ***New India Assurance Co. Ltd., Cuddalore Vs. S.Sivapathi and others*** reported in ***2011 (1) TN MAC 832*** has specifically held that since the claimants have failed to establish that there was a valid insurance policy on the date of accident, the insurance company is not statutorily liable to pay compensation and the relevant passage is extracted hereunder:-

> *"18. On the facts of this case, this Court is of the considered view that merely because the Appellant-Insurance Company had taken out an Application under Section 170 of the Motor Vehicles Act, 1986, to contest the Claim Petition and raise all the defences that are open to them under the statute and when the owner of the vehicle had remained ex parte, it cannot be construed that it is the burden of the Insurance Company to prove the negative, i.e., that the vehicle was not insured with them at the time of accident. The Claimants have failed to establish that there was valid Insurance Policy, on the date of accident and in such*

circumstances, the Insurance Company is not statutorily liable to pay compensation to the victims. In view of the above, the liability fastened on the Appellant-Insurance Company, to pay the compensation is set aside."

17. As already pointed out, in the case on hand also, the first respondent/claimant has not furnished the particulars regarding the insurance coverage and since he has failed to discharge his initial burden, the question of burden shifting to the appellant/insurer does not arise at all.

18. The learned counsel appearing for the first respondent/claimant would submit that the first respondent/claimant has shown that the insurance coverage was available up to 28.05.2010 and that since the accident was occurred on 26.05.2010, the appellant/insurer is liable for the claim.

19. No doubt, the Tribunal, by observing that Ex.P.3-Motor Vehicle Inspector's report states that the offending vehicle has insurance coverage up to 28.05.2010 and that no notice was sent by the appellant/insurer to

the second respondent/owner of the offending vehicle calling for the particulars of the insurance coverage, has come to a decision that the offending vehicle has insurance coverage at the time of accident and the same was in force and as such, the appellant/insurer was also responsible to pay the compensation.

20. As already pointed out, it is evident from Ex.R.1 and Ex.R.2 that the appellant/insurer has already sent a legal notice to the second respondent/ owner of the vehicle calling upon him to furnish the particulars of the vehicle including the insurance coverage through registered post and that the same was received by one Vanitha. No doubt, the appellant/insurer has also produced the copy of another notice sent to the second respondent/owner of the vehicle, but since the first respondent/claimant's side has raised objections, the said notice came to be exhibited as Ex.R.3 subject to the objections raised. No doubt, the appellant/insurer has not produced any postal acknowledgement to show that notice under Ex.R.3 was received by the addressee. It is pertinent to note that the appellant/insurer has produced the postal receipt along with Ex.R.1-notice, which was addressed to the second respondent/owner of the vehicle.

21. Section 27 of the General Clauses Act deals with the presumption of service of notice sent by post and provides that service of such notice shall be deemed to have been effected unless the contrary is proved. The Honble Supreme Court in ***C.C.Alavi Haji Vs. Palapetty Muhammed and another*** reported in ***(2007) 6 ACC 555*** has held that when a notice is sent to the correct address by registered post, service of notice can be presumed and the relevant passage is extracted hereunder:-

> *"14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement refused or not available in the house or house locked or shop closed or addressee not in station, due service has to be presumed."*

22. In the case of ***K.Bhaskaran Vs. Sankaran Vaidhyan Balan and another*** reported in ***1999 (7) SCC 510,*** the Hon'ble Apex Court has held that where the sender has despatched the notice by post with the correct address written on it, then it can be deemed to have been served on the sendee.

23. Section 27 of the General Clauses Act could be profitably imported and in such situation, service of notice is deemed to have been effected on the sender unless he proves that it was really not served and that he was not responsible for such non-service and the relevant passages are extracted hereunder:-

> *"It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him, [vide Harcharan Singh vs. Smt. Shivrani and Ors., [1981] 2 SCC 535, and Jagdish Singh v. Natthu Singh, [1992] 1 SCC 647.] Here the notice is returned as unclaimed and not as refused. Will there be any significant different between the two so far as the presumption of service is concerned? In this connection a reference to Section 27 of the General Clauses Act will be useful. The Section reads thus :*

"27. Meaning of service by post. - Where any central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression `serve' or either of the expressions `give' or `send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post"

No doubt Section 138 of the Act does not require that the notice should be given only by `post'. Nonetheless the principle incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has despatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice."

24. In the case on hand, as already pointed out, since the notice was sent to the correct address of the owner by registered post as evident from Ex.R.1-notice along with postal receipt, this Court can easily presume the service of notice. But in our case, notice was served on a person, namely, Vanitha. According to the learned counsel appearing for the appellant/ insurer, notice was received by the wife of the addressee. Whatever it is, since the registered letter was served on a person, it has to be presumed that the same was delivered as per the authorization given by the addressee. More importantly, addressee of the notice i.e., second respondent/owner of the vehicle had remained *ex parte* and he has not raised any plea that notice was sent to incorrect address or that notice was not really served and that he was not responsible for such non-service. Considering the above, the finding of the Tribunal that no notice was sent to the second respondent/owner of the vehicle, is very much against the evidence available on record.

25. As already pointed out, the first respondent/claimant has miserably failed to establish that there was valid insurance policy on the date of accident and as such, the appellant/insurer cannot be made liable

statutorily. Consequently, the finding of the Tribunal mulcting liability on the appellant/insurer is liable to be set aside. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

26. In the result, this Civil Miscellaneous Appeal is allowed and the impugned award dated 20.01.2011 passed in M.C.O.P.No.251 of 2010 mulcting liability on the appellant/insurer to pay compensation is set aside. The appellant/insurer is permitted to withdraw the amount, if any amount already deposited. In case, if the first respondent/claimant has already withdrawn any amount deposited by the appellant/insurer, the appellant/ insurer is permitted to recover the same from the second respondent/owner of the offending vehicle. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

29.08.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

K.MURALI SHANKAR,J.

csm

To:

1. The Motor Accident Claims Tribunal/
   Additional District Court/
   Fast Track Court No.II, Thoothukudi.

2.The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

Pre-Delivery Order made in
C.M.A.(MD)No.1407 of 2011
and
M.P.(MD)No.1 of 2011

Dated : 29.08.2023