



C.M.A(MD)No.776 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 14.08.2023

Pronounced On : 11.10.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.776 of 2013

The Manager,
Oriental Insurance Company Limited,
187-A/6, P.K.S.A., Arumugam Road,
Post Box No.307, Sivakasi,
Kamaraj District.

: Appellant/2nd Respondent

Vs.

1.Pushpam : 1st Respondent/Petitioner

2.Ganesan : 2nd Respondent/1st Respondent

3.A.Katheeswaran : 3rd Respondent/3rd Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P. No.1608 of 1998, dated 04.10.2010 on the file of the Motor Accident Claims Tribunal cum Additional District Court, (FTC-2) Madurai.

For Appellant : Mr.A.Iango

For Respondents : Mr.M.Sankar, for R1.
: Mr.N.Dilip Kumar, for R3.



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J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1608 of 1998, dated 04.10.2010 on the file of the Motor Accident Claims Tribunal cum Additional District Court, (FTC-2) Madurai.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.75,000/- with interest at 7.5% per annum to the first respondent/claimant for the death of Virumandi Thevar, consequent to an accident occurred on 24.06.1998, challenged the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.

3. It is pertinent to note that though the appellant has taken a stand that the compensation awarded by the Tribunal is very much exaggerated and disproportionate to purported incident, the learned counsel for the appellant/insurer would submit that they are disputing the liability mulcted on it, on the ground that there was no insurance coverage for the offending vehicle at the time of accident.



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4. For the sake of convenience and brevity, the parties herein after will be referred as per their status/ranking in the Tribunal.

5. It is also pertinent to note that the second respondent/insurer has not disputed the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the first respondent, driver of the motor vehicle. Admittedly, the motorcycle bearing Registration No. TN-67-Y-6863 was owned by the 3rd respondent and the same was driven by the first respondent at the time of accident.

6. The claimant, by alleging that the vehicle of the third respondent was insured with the second respondent, has laid the claim petition against the driver, owner and the insurer of the vehicle, allegedly involved in the accident. But the main defence of the second respondent/insurer is that the third respondent vehicle was not insured with the second respondent and hence, the second respondent/insurer is not liable for the claim.

7. Admittedly, the first respondent/driver and the second respondent/insurer have filed their counter statements. But the third respondent/owner had remained ex-parte from the beginning.



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8. It is evident from the records that the respondents 1 and 2 have cross examined the claimant's witnesses P.W.1 to P.W.3. But when the case was posted for the evidence of the respondents 1 and 2, despite sufficient opportunities, they have not chosen to adduce any evidence and hence, their evidence was ordered to be closed.

9. In the counter statement, the second respondent has specifically stated that the owner of the vehicle has not co-operated with the insurer by furnishing the insurance policy and its validity, driving license of the driver and its validity on the date of accident and other relevant particulars and hence, the second respondent is not liable to pay any damages and if at all award is passed, it is to be paid by the first respondent and not the second respondent.

10. As rightly pointed out by the learned counsel for the appellant, when the claimant-P.W.1 was in witness box, it was specifically suggested by the second respondent/insurer side, that the vehicle bearing Registration No. TN-67-Y-6863 involved in the accident, dated 24.06.1998 was not insured with the second respondent and hence, they



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are not liable to pay any compensation. No doubt, the said suggestion was denied by P.W.1. During the cross examination of P.W.2, who is none other than the son of the claimant and grand son of the deceased, it was suggested that the insurance policy for the offending vehicle was expired by 25.12.1995 and that since the accident was occurred 2 ½ years latter, the second respondent is not liable to pay the compensation and that they have to get the compensation only from the owner and the driver of the vehicle.

11. The learned counsel for the appellant would specifically contend that the claimant has not furnished the particulars of insurance allegedly taken from the second respondent in the claim petition or subsequently.

12. In the main claim petition, while describing the second respondent/insurer in the cause title, insurance policy number and other particulars were not shown. Moreover, the first respondent/claimant in Column -16 of the claim petition i.e., name and address of the insurer of the vehicle, the second respondent/insurance company name and address have been shown. Except the above, the claimant has not furnished any



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other particulars with regard to the insurance coverage of the vehicle involved in the accident.

13. Moreover, as rightly contended by the learned counsel for the appellant, the claimant in her evidence before the Tribunal has also not chosen to furnish the particulars of the insurance policy. In a similar case in '*The TATA AIG General Insurance Co.Ltd., Chennai Vs. P.Antonysamy* [C.M.A(MD)No.1407/2011, dated 29.08.2023], this Court has dealt with the same and the relevant passages are extracted hereunder:

*“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



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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;*



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“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*



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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.”



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14. The above decisions are squarely applicable to the case on hand. In the present case also, the first respondent/claimant has not furnished the particulars regarding the insurance coverage and since she has failed to discharge the initial burden, the claim of the respondent that the appellant/insurer by remaining ex-parte, failed to discharge their burden, does not hold good.

15. Considering the above, this Court has no hesitation to hold that since the claimant has miserably failed to establish that there was valid insurance policy on the date of accident, the appellant/insurer cannot be made liable statutorily. Consequently, the finding of the Tribunal mulcting liability on the appellant/insurer is liable to set aside.

16. As already pointed out, the appellant has not specifically disputed the quantum of compensation awarded at by the Tribunal. Moreover, for the death of the claimant's father, the Tribunal has awarded only Rs.75,000/- and as such, the same cannot said to be excessive or unreasonable. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.



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17. In the result, the Civil Miscellaneous Appeal is allowed and the award passed in M.C.O.P.No.1608 of 1998, dated 04.10.2010 on the file of the Motor Accident Claims Tribunal cum Additional District Court, (FTC-2) Madurai, is set aside. The appellant/ Insurer is directed to withdraw the award amount, already deposited. In case, the first respondent has already withdrawn any amount deposited by the appellant/insurer, the appellant/insurer is permitted to recover the same from the third respondent/owner of the vehicle. Parties are directed to bear their own costs.

11.10.2023

NCC : Yes\No
Index : Yes\ No
Internet : Yes\ No
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To

- 1.The Motor Accident Claims Tribunal
cum Additional District Court, (FTC-2) Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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