BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.374 of 2019

The Branch Manager,
IFFCO Tokiyo General Insurance Company Ltd.,
Kings Town Park, 2nd Floor,
No.19/01, Ramalinga Nadar,
Uraiyur, Trichy District. ..... Appellant/ Respondent No.2

-vs-

1. Mathina Begam

2. Khardarsha ...... Respondents 1 and 2/ Petitioners

3. Ramalingam (died) ..... Respondent No.3/ Respondent -1

4. Mohandoss .... Respondent No.4
(R4 is brought on record as LR of the deceased R3 vide order of this Court dated 30.01.2023 made in C.M.P(MD) Nos.843 to 845 of 2023 in C.M.A(MD) No.374 of 2019)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 26.10.2018 passed in M.C.O.P.No.176 of 2012, on the file of the Motor Accidents Claims Tribunal, Special Court for E.C & NDPS Act Cases, Pudukkottai.

For Appellant : Mr.V.Sakthivel

For Respondents : No appearance – for R1 and R2
: R3 – died (steps taken)
: Mr.S.Alagusundar – for R4

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal, Special Court for E.C & NDPS Act Cases, Pudukkottai made in M.C.O.P.No. 176 of 2012 primarily on the ground that there is no policy for the vehicle involved in the accident.

2. According to the claimants, their son was aged about 7 years, who was playing along with others in front of the house of Kamarudheen. At that point of time, the owner/driver of the JCP had driven the said vehicle in a rash and negligent manner and demolished the wall, which had fallen upon the said children. The son of the claimants had died on the spot. An FIR in Crime No.158 of 2010 was registered. The parents have filed the claim petition seeking a compensation for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only).

3. The owner of the vehicle had remained ex-parte. The Insurance Company had filed a counter contending that they are disputing the insurance of the first respondent vehicle in the claim petition. They have further contended that the cover notice is a fake one and they have also issued registered notice to the owner of the vehicle on 03.03.2011 asking to furnish the details of the previous and subsequent policy issued by them.

4. The Insurance Company had filed a counter contending that the policy for the vehicle involved in the accident was obtained from the Company with fraudulent intention and activities.

5. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the accident had happened only due to the rash and negligent driving of the driver of the JCP. The Tribunal further found that the Insurance Policy has been marked as Ex.P.5 and arrived at a finding that the Company had failed to establish that Ex.P.5 – Policy is a forged one. Thereafter, the Tribunal proceeded to fix the award amount at Rs.5,00,000/- (Rupees Five Lakhs only). This award is under challenge in the present appeal.

6. The primary contention of the learned counsel appearing for the appellant/Insurance Company is that the appellant has not issued any policy in favour of the JCP vehicle belonging to the first respondent which was involved in the accident. He further contended that immediately after coming to know about the accident, they have issued a registered notice to the insured person under Ex.R.1, on 03.03.2011. They have also issued a notice to their insurance agent under Ex.R2, on 30.03.2011.

7. According to the learned counsel appearing for the appellant/Insurance Company, they have also lodged a police complaint on 07.06.2011 alleging that the policy has been obtained in a fraudulent manner in favour of the insured person with the help of their insurance agent and their former employee. Therefore, Ex.P.5 – Policy cannot be relied upon for any purpose, much less, for the purpose of considering that the vehicle was covered by the insurance policy. When the very Insurance policy itself is disputed, the Tribunal had wrongly cost the burden upon the Insurance Company to disprove that it is a forged document. The claimant or the owner of the vehicle alone can prove that it is a genuine document. Hence, he

contended that when there is no insurance policy at all, the question of claim of compensation would not arise.

8. Per contra, the learned counsel appearing for the owner of the vehicle had contended that the Policy has been issued by the Company and copy has been marked as Ex.P.5, no steps have been initiated by the Company either to cancel the said policy or to pursue the police complaint said to have been lodged by them. Therefore, according to the learned counsel appearing for the owner of the vehicle, when the policy is in subsistence and the nature and manner of the accident are not disputed, the Insurance Company is liable to identify the owner of the vehicle.

9. I have carefully considered the submissions made by the learned counsel on either side and perused the documents on either side.

10. The primary contention of the learned counsel appearing for the Insurance Company is that Ex.P5-Policy has not been issued by the appellant/Insurance Company on 10.06.2010. He had further contended that the said policy has been obtained from the Company by playing fraud. A

perusal of the police complaint lodged by the Insurance Company would reveal that as per the version of the Insurance Company, the Policy for the vehicle had been obtained from their Company with fraudulent intention and activities. In the additional counter filed in claim petition, the Insurance Company has specifically contended that the policy for the mentioned vehicle has been obtained from their Company with fraudulent intention and activities. A perusal of Ex.R.2, Registered notice issued by the Insurance Company to their insurance agent will clearly reveal that the insurance agent was involved in the said transactions. The police complaint lodged by the Insurance Company under Ex.R.3, on 07.06.2011 indicates that a former employee, one Deenadhyalan was also involved in the said transactions. All these facts put together will clearly indicate that the policy is neither fake nor a forged document. But, it has been issued by the employee of the Insurance Company through the Insurance agent. Though the company was aware of the some fraudulent means in obtaining the Insurance Policy, they have not taken any steps either to cancel the policy or to pursue the police complaint which was lodged on 07.06.2011 through registered post. All these facts put together will clearly indicate the existence of Insurance Policy on the date of accident.

11. As far as the quantum is concerned, the boy aged about 7 years, had passed away and the quantum of Rs.5,00,000/- (Rupees Five Lakhs only) awarded by the Tribunal is found to be reasonable.

12. The learned counsel appearing for the appellant/Insurance Company had further contended that their insurance agent and their former employee were involved in some fraudulent activities which has resulted in issuance of the policy. Therefore, he sought liberty from this Court to initiate action not only as against them, but also as against the beneficiary viz., insured person. Unless violation of policy condition is made out, the question of permitting the Insurance Company to recover the amount from the owner of the vehicle would not arise in the Motor Accident Claim case. If the Insurance Company, if so advised, is always at liberty to proceed as against their agent or their erstwhile employees or the insured person before the appropriate forum.

13. With the above said observations, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

30.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Motor Accidents Claims Tribunal,
Special Court for E.C & NDPS Act Cases,
Pudukkottai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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30.03.2023