BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.02.2023

Pronounced on : 21.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

Rev.Aplc(MD)No.72 of 2021
in
C.M.P.(MD)No.6791 of 2021

The Correspondent,
Sri Aurobindo Mira Matric Higher Secondary School,
108, Bypass Road, Madurai - 625 016. ... Petitioner / 2nd respondent

Vs.

1.The Branch Manager,
Bharathi AXA General Insurance Co. Ltd.,
Shri Ram Centre,
No.180, Ground Floor, P.P.Chavadi,
Theni Main Road,
Madurai – 636 016. ... 1st respondent / appellant

2.R.Indirani ... 2nd Respondent / 1st respondent

PRAYER :-

This Reveiw Application is filed under Order XL VII Rule 1 and Section 114 of the Code of Civil Procedure to set aside the order dated 21.06.2021 in CMA(MD)No.559 of 2018 before this Court.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.V.Sakthivel - for R1

Mr.S.M.Mohan Gandhi - for R2

JUDGMENT

This Review Application is filed against the judgment passed in C.M.A(MD)No.559 of 2010 dated 21.06.2021. The Civil Miscellaneous Appeal is filed against the order in M.C.No.1158 of 2012 on the file of the Chief Judicial Magistrate, Madurai. A Cross Objection in Cros.Obj(MD)No.5 of 2019 was filed against the order passed in M.C.O.P.No.1158 of 2012.

2.Brief substance of the claim petition in M.C.O.P.No.1158 of 2012, is as follows:

On 15.10.2012, at about 5.30 pm., when the claimant, was travelling as a pillion rider in a motorcycle bearing registration number TN 59 AH 8410, a bus bearing registration number TN 58 W 5907 came behind the motorcycle in a rash and negligent and hit the motorcycle from behind. The claimant sustained injuries. She took treatment as inpatient from 15.10.2010 till 03.12.2010 and she claimed a compensation of Rs.15,00,000/-.

3.Brief substance of the counter filed by the second respondent is as follows:

There was no insurance policy on the date of accident. The first respondent paid a premium by way of a cheque and the cheque was dishonoured and the insurance policy was cancelled. There was no policy coverage. The nature of accident is denied. Nature of injuries, disability are all denied. It was the rider of the two wheeler who was responsible for the accident. The rider of the two wheeler was rash and negligent. The owner of the vehicle and the insurance company of the two wheeler are necessary parties. The driver of the bus drove the vehicle in a slow and cautious manner. It was the rider of the two wheeler who was riding the vehicle along the middle of the road in a rash and negligent manner and he invited the accident. The claim under various heads are excessive. The driver of the bus was not having valid driving licence. The vehicle was not having fitness certificate. The second respondent is not responsible to pay compensation.

4.Brief substance of the additional counter filed by the second respondent is as follows:

It is admitted that the insurance policy was issued for a vehicle bearing registration number TN 58 W 5907 that belong to the first respondent in policy No.FC/10329196/T2/08/CIT 212, on receiving premium by way of a cheque subject to the honour of cheque. But the cheque issued by the first respondent was returned by the bank for insufficient fund and the same was duly informed to the first respondent and the policy issued was duly cancelled. The company sent a intimation of dishonour of cheque to the first respondent on 18.08.2010. It is denied that on oral information, the first respondent paid the amount in cash and the first respondent has to prove the same. It is denied that the company issued a policy certificate in FCV/1089639/T2/10/CIT 212, the first respondent never pays any amount and the second respondent has not issued any policy certificate. A policy number FCV/10389639/T2/10/CIT212 was issued for a vehicle bearing engine number E482CD4E234085 and the chasis number MC219HRT04E201912. The engine number and the chasis number of the vehicle bearing registration number TN 58 W 5807 as per the registration certificate is E482CDAE234085 and MC219HRT0AE201912 respectively. Hence, the vehicle bearing registration number TN 58 W 5907 was not at all insured with the second respondent on the date of accident. The second respondent is not liable to pay compensation and hence the first respondent is liable to pay compensation.

5.Two witnesses were examined and eight documents were marked on the side of the petitioner. Four witnesses were examined and twelve documents were marked on the side of the respondent. The Tribunal has awarded a sum of Rs.3,81,925/- as compensation to be paid by the second respondent.

6.Against the award, the second respondent / insurance company filed a Civil Miscellaneous Appeal in C.M.A(MD)No.559 of 2018, on the following grounds:

The Tribunal failed to consider that the policy for the vehicle was cancelled on the date of accident and there was no policy in force. The alleged policy of insurance is a forged one. The admission of the owner of the vehicle was not considered by the Tribunal. The Tribunal ought to have appreciated the evidence of R.W.2. The Tribunal failed to consider the evidence given by the R.W.2 who was the owner of the vehicle. The policy is a forged one and the claim petition has to be dismissed and the order of the Tribunal is to be set aside.

7.A Cross Objection was also filed for enhancement of compensation. After hearing both sides, this Court by its order dated 21.06.2021, allowed the appeal and the Cross Objection. The owner of the offending vehicle was directed to deposit the modified amount.

8.Against that order this review petition was filed on the following grounds:

In the counter, it was admitted that in Ex.R6, policy was issued by the first respondent. The liability was fixed on the review petitioner on the ground that the review petitioner failed to produce policy proposal. The policy proposal is a document to be submitted by the insurer and to be handed over by the insurance company and hence, there was no possibility for the owner to be in possession of the proposal form. This Court has given a finding that the owner of the vehicle has not rectified the typographical error that occurred in the policy certificate. Out of the seventeen figures, only one figure was wrongly typed and it was not brought to the knowledge of the first respondent. It is, no doubt that the letter 'A' may be mistaken as '4' as they were similar in structure. The insurance company failed to produce the policy details. The insurance company sent a letter dated 19.10.2010 five days after the policy was taken.

9. On the side of the review petitioner, it is stated that initially, the insurance company has filed a counter that there was no policy. But in the additional counter filed by the insurance company, it was admitted that the insurance company issued a policy but they questioned only the number. When a xerox copy of the insurance policy was produced by the claimant, it is the duty of the insurance company to prove that the policy was not in force and that the policy not with regard to the offending vehicle. Except the figure 'A' other numbers both engine and chasis number tally with the policy certificate. Since the letter 'A' resembles '4', a typographical error was crept into he policy certificate and that discrepancy cannot be taken in advantage of the insurance company.

10. An official from the RTO office was examined as R.W.4. He has deposed that the insurance policy number mentioned in the policy was given

to a vehicle that was 34 years old. No other vehicle was given the particular number and he has admitted that only as a typographical error, instead of No. '4', the letter 'A' was typed. There is no necessity for the owner to produce the original policy certificate. It is sufficient if the branch office, where the policy was taken, was mentioned. The insurance company failed to produce the policy register or payment of premium register. Only on three grounds, the appeal was allowed. That is the owner of the vehicle failed to correct the error in the policy. This Court failed to consider that there is only an error in a letter out of the seventeen letters of the chasis number MC219HRT04E201912. The letter 'A' and the letter '4' are similar and there was no possibility for the owner to find out the error easily. The next point considered by this Court is that there was no pleadings regarding the non-involvements of the vehicle.

11. This Court has failed to consider that it was the duty of the insurance company to prove that the insurance policy is a forged one. This Court has failed to consider that proposal form will be handed over to insurance company and there is no possibility of the owner of the vehicle to be in possession of the proposal form. No witness was examined, no

document was marked against the Ex.R6. It is the duty of the insurance company to disprove the policy. The admission in Para-7 was not considered by this Court.

12. On the side of the appellant it is stated that the cheque issued by the owner of the vehicle was bounced and the same was intimated to the owner of the vehicle through Ex.R1 to Ex.R4. Only xerox copy of the policy was marked on the side of the appellant. It is the duty of the owner to produce the original, when the genuineness of the insurance policy was questioned.

13. A judgment of this Court reported in **2004 (2) TN MAC 309(DB)** in the case of **United India Insurance Co. Ltd., Vs R.Venkatesan and another**, is cited, wherein it is held as follows:

> *"18. ----*
>
> *We are of the view that with the available details had the Insurance Company taken some more efforts or interest, they could have ascertained the correct information whether the policy referred to in the claim petition was taken by the owner of the vehicle that too in their office. When the details of policy, the commencement and the expiry date, address of insurance company have been given, we are of the view that it would not be difficult for*

the insurance company to make a search in their office and produce necessary evidence to the effect that on that particular date, no policy was issued by the vehicle in question."

14. On the side of the review petitioner, another judgment of this Court made in **C.M.A(MD)No.406 of 2012 dated 16.06.2022,** is cited, wherein this Court has held that it is the duty of the insurance company to produce documents regarding the policy.

" 7.---- The appellant herein / second respondent failed to produce any document to prove that there was no policy for the offending vehicle. The Policy Register pertaining to the period was not marked."

15. On the side of the review respondent, it is stated that it is the duty of the appellant to furnish the details. A judgment of this Court reported in **2003 (1) mlj 268** in the case of **United India Insurance Company Limited, Motor Third Party Claims Office, Madras,** is cited. The relevant portion is extracted hereunder:

" (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."

16. A perusal of the records reveals that the insurance company has filed a counter denying the entire policy alleging that the policy is a forged one. Ex.R1 to Ex.R4 were filed in support of cancellation of the policy certificate issued. It is seen that in the additional counter, the insurance company has admitted the issuance of a second policy certificate. Copy of the certificate was marked as Ex.R6. The contention of the review petitioner is that instead of 'A', the letter '4' was printed as a typographical error. A scope of review is very limited.

17. The scope of a review petition is very limited. All the bove points cannot be considered in this petition. There is no scope of re-arguing the case. Due to the dispute between the owner and the insurance company, the claimant should not be affected and hence the owner of the vehicle is directed

to deposit the compensation amount with accrued interest and cost before the Tribunal and permission is granted to the claimant to withdraw the amount to be deposited by the owner of the vehicle. The owner of the vehicle is given liberty to proceed against the insurance company before the proper forum for reimbursement of the above amount.

18. In view of the above, this Review Application is disposed of and liberty is granted to the owner of the vehicle to proceed against the insurance company and to take steps to get reimbursement of the amount from the insurance company by taking steps before the proper forum. Consequently, connected miscellaneous petition is closed.

21.03.2023

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

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To

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

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

R.THARANI, J.

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Pre - Delivery Judgment made in
Rev.Aplc(MD)No.72 of 2021

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