BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 28.08.2023

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.90 of 2018

C.Kaliaperumal : Appellant/Petitioner

Vs.

1.P.Venugopal

2.Reliance General Insurance Company Limited,
2nd Floor, Balmer Lawrie House,
No.628 Annasalai,
Chennai 600 018. : Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 26.08.2013 made in M.C.O.P.No.9 of 2012 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Thanjavur at Kumbakonam.

For Appellant : Mr.K.M.Karunakaran

For Respondents : Mr.V.Sakthivel, for R2.

: No Appearance, for R1.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the judgment and decree, dated 26.08.2013 made in M.C.O.P.No.9 of 2012 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Thanjavur at Kumbakonam.

2. The appellant/claimant, who was awarded with compensation of Rs.2,64,725/- for the injury suffered by him, consequent to an accident occurred on 20.07.2010, challenged the liability mulcted only on the first respondent/owner and for not invoking the doctrine of pay and recovery.

3. The main contention of the appellant in the appeal grounds is that the vehicle involved in the accident was insured with the second respondent and that was effective from 15.07.2010 and that despite the insurance coverage, the Tribunal has failed to invoke the doctrine of pay and recovery.

4. The learned counsel for the second respondent/insurance company would submit that the insurance coverage was for a period between 24.07.2010 and 23.07.2011 and the insurance policy and cover note produced by them were exhibited under Ex.R.1 and Ex.R.2 before the Tribunal and that the Tribunal taking note of the policy coverage, has rightly held that the first respondent/owner alone was liable and exonerated the insurance company.

5. It is evident from the insurance policy that the insurance coverage was for the period between 00.00 hours on 24.07.2010 and 23.59 hours on 23.07.2011. Admittedly, the accident was occurred on 20.07.2010.

6. In the case of ***the Branch Manager, National Insurance Co.Ltd., Vs. Vijayalakshmi and Others*** reported in ***2017(1)TN MAC 168 (DB),*** a Division Bench of this Court has specifically observed that the contract of insurance being a special contract, coverage would commence from time and date mentioned in the policy of insurance.

7. The Hon'ble Supreme Court in ***New India Assurance Company Limited Vs. Bhagwati Devi and Others*** reported in ***1999 ACJ 534***, taking note of the fact that the policy was taken at 04.00 p.m. on 17.02.1989 and the accident took place at 09.00 a.m. on the same day, by relying on its earlier decision in ***National Insurance Co. Ltd. vs. Jikubhai Nathuji Dabhi*** reported in ***1997 ACJ 351 (SC),*** has held that when there is a special contract mentioning in the policy, the time when it was bought, it would be operative from that time and not fictionally from the previous midnight and that since there is a mention of a specific time for its purchase then a special contract to the contrary comes into being and the policy would be effective from the mentioned time.

8. The Hon'ble Apex Court in ***National Insurance Company Limited, Branch Office, Dharmapuri Vattam Vs. Geetha & Others*** reported in ***2004 (1) TN MAC 174 (DB)***, taking note of the fact that the accident had taken place at 05.30 a.m. on 15.06.1998 and the terms of the Insurance Policy covers only the period from 15.06.1998, 10.00 a.m, has held that unless the insurance company accepts and issues policy, person

who paid premium cannot come forward with plea that insurer had obligation to pay compensation and therefore, the insurance company is not liable to pay compensation.

9. In a similar case, where the insurance policy was issued on 22.06.1992 at 12.45 p.m., and the policy expired on 21.06.1993 and came to be renewed 9 days thereafter and subsequently got expired and subsequently renewed 21 days thereafter, the Hon'ble Supreme Court in ***National Insurance Co. Ltd. v. Sobina Iakai and Others*** reported in ***2007 ACJ 2043***, has held that once a specific time and date is mentioned, then the Insurance policy becomes effective from that point of time and therefore, allowed the appeal filed by the Insurance Company and exonerated it.

10. Considering the above, it is clearly evident that there was no insurance coverage for the offending vehicle on the date of accident. Hence, the finding of the Tribunal mulcting liability only on the first respondent cannot be found fault with. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be set aside.

Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

11. In the result, the Civil Miscellaneous Appeal is dismissed and the impugned award dated 26.08.2013 in M.C.O.P.No.9 of 2012 passed by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Thanjavur at Kumbakonam, stands confirmed. The parties are directed to bear their own costs.

28.08.2023

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

1.The District and Sessions Judge
(Communal Clashes Court) Motor Accident Claims Tribunal,
Madurai.

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

K.MURALI SHANKAR,J.

das

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