BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.(MD)No.331 of 2023
and
C.M.P(MD)No.4068 of 2023

B.Thekkan ... Appellant/1st respondent

Vs.

1.Cinnaponnu
2.Poongothai
3.Gurusamy
4.Pitchaiyammal
... Respondents 1 to 4/1 to 4 claimants

5.ICICI Lamboard General Insurance United,
Arket 3rd Floor,
Annamalai Nagar,
Karur By Pass Road,
Thilai Nagar,
Trichy. ... Respondent No.5/2nd respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order passed in M.C.O.P.No.138 of 2009 on the file of the Motor Accident Claims Tribunal(Sub-Court), Kulithalai, dated 28.08.2015.

For Appellant :Mr.R.Balakrishnan
For R-1 to R-3 :Mr.N.Sudhagar Nagaraj
For R-5 :Mr.P.Pethu Rajesh
(R-4 died)

JUDGMENT

Challenging the award passed in M.C.O.P.No.138 of 2009 on the file of the Motor Accident Claims Tribunal(Sub-Court), Kulithalai, dated 28.08.2015, this Civil Miscellaneous Appeal is filed.

2. Before going into the merits of the case, it is necessary to place the background in which this appeal is filed.

3. The claim petition in M.C.O.P.No.138 of 2009 on the file of the Motor Accident Claims Tribunal(Sub-Court), Kulithalai, is filed seeking compensation for the death of one Ganesan, who is the husband of first claimant, father of claimants 2 and 3 and son of fourth claimant.The compensation claimed was Rs.10,00,000/-. The first respondent in the claim petition is P.Thekkan the appellant herein, who is the owner of the lorry bearing Registration No.TN-23-2394, involved in that accident and insured with ICICI Lamboard General Insurance United.

4. The Tribunal after contest, passed an award of Rs.7,00,000/- on 17.02.2011, fixing the liability on the Insurance Company. Challenging the said award, the Insurance Company filed C.M.A(MD)No.80 of 2013 stating that there was no valid insurance

policy for the offending vehicle on the date of accident and Ex.P5 – Insurance Policy produced by the claimants before the Tribunal is questionable.

5. This Court considering the rival submissions, recorded that it is necessary to remand the claim petition to the Tribunal to find out whether Ex.P5-Insurance Policy, is genuine or not. Accordingly, the claim petition was remanded to the file of the Motor Accident Claims Tribunal(Sub-Court), Kulithalai. After remission, fresh enquiry was conducted and now, the Tribunal has fixed the liability on the owner of the vehicle namely P.Thekkan. Thus, this Civil Miscellaneous Appeal is filed by the appellant/owner of the vehicle.

6. The short point that arises for consideration in this appeal is,

> *"(i)Whether there was valid insurance policy for the offending vehicle at the time of accident or not?; and*
>
> *(ii) Whether the liability fastened on the appellant is correct?"*

7. The learned counsel for the appellant drew the attention of this Court to Ex.R2-Insurance Policy, to show that there was a valid

policy for the offending vehicle on the date of accident. He also referred to the evidence of R.W.2 to show that Ex.R2 was issued by the Insurance Company. He further submitted that R.W.2 during the course of evidence, had admitted that Ex.R2 is the policy. Thus, he submitted that though the appellant had proved by the evidence that there was a valid insurance policy for the offending vehicle on the date of accident, the Tribunal had wrongly fixed the liability on the appellant, namely, the owner of the vehicle.

8. In response, the learned counsel for the fifth respondent/Insurance Company submitted that Ex.R2 was issued only for official purpose. After the award passed during the first round of litigation on 17.02.2011, when the Insurance Company filed appeal, the Insurance Company moved a petition for stay. There was a conditional order to pay part of the compensation amount. For the record purpose, Ex.R2 was created to show that there was a insurance policy for the period from 25.11.2008 to 24.11.2009. However, this policy was issued on 25.10.2011 ie., eight months after passing of award on 17.02.2011. The address was also shown as office of the Insurance Company at Hyderabad and not the address of the fifth respondent. R.W.2 has also given evidence to show that Ex.R2 was issued only for office purpose ie., for depositing the amount as ordered by this Court. To reiterate that

there was no valid insurance policy for the offending vehicle on the date of accident on 11.03.2009, the insurance policy taken for the vehicle from 12.03.2009 to 11.03.2010 issued on 21.03.2009 was produced as Ex.R1. It is reiterated by the learned counsel for the fifth respondent/Insurance Company that the insurance was taken only on 12.03.2009 for the offending vehicle. It was rightly considered by the Tribunal and it held that there was no valid insurance policy on the date of accident and held that the appellant was liable to pay compensation.

9. I have considered the rival submissions and perused the records.

10. From the available evidence, it is seen that there are two contradictory insurance policies available ie., Exs.R1 and R2. Ex.R1 policy was issued for the period from 12.03.2009 to 11.03.2010 whereas Ex.R2 policy shows that it was issued covering the period from 25.11.2008 to 24.11.2009. As discussed above, it is the submission of the learned counsel for the Insurance Company that Ex.R2 was issued only for office purpose to deposit the amount as ordered by this Court in the earlier appeal. Even for depositing the amount, it is absurd on the part of the Insurance Company to issue such an Insurance Policy.

However, this policy was issued only on 25.10.2011 ie., eight months after passing of award on 17.02.2011 during the first round. The address of the appellant is also not given in the policy. Therefore, this Court finds that there is substance in the submission of the learned counsel for the Insurance Company that Ex.R2 policy was issued for official purpose for depositing the amount in the Court.

11. Primarily, it is the duty of the appellant to prove that there is valid insurance policy for the offending vehicle on the date of accident. In a disputed case, he must establish there was valid insurance policy on the date of accident, by producing necessary documents like receipt for payment of premium, date of payment etc., along with insurance policy. Admittedly, he has not produced the insurance policy during the first round of enquiry. He only produced the quotation produced by the Insurance Company and that was marked as Ex.P5.

12. When Ex.P5 was challenged during hearing in C.M.A(MD)No.80 of 2013, this Court directed the Inspector of Police, Mayanur Police Station, to inspect and report as to whether the insurance policy under Ex.P5 is genuine or not. The Inspector of Police gave a reply stating that the so called policy, dated 12.03.2009, is not a

policy, but it is only a quotation and that, the insurance policy has been taken much after the accident. In the said circumstances, the matter was remanded to the Tribunal for fresh enquiry.

13. It is pertinent to refer to the evidence of the appellant as regards taking of policy. He admitted that ex-parte award was passed during the first round of litigation. He had paid the premium amount through Demand Draft. However, he has not produced any evidence to show the payment of premium through Demand Draft. It is his evidence that he produced the original insurance policy of the vehicle to the Motor Vehicle Inspector and the Motor Vehicle Inspector has not returned the policy. It is his evidence that he obtained Ex.R2 from the Trichy Branch office of the fifth respondent Insurance Company. He admitted that it was issued only on 25.10.2011.

14. There are two things in his evidence, (i) he has not produced any evidence to show the payment of premium for taking insurance policy; and (ii) he claimed that handed over the original insurance policy to the Motor Vehicle Inspector and the Inspector did not return it. This version of evidence is unbelievable and it is said only for the purpose of his case. He is expected to get the original fact if really he handed over the policy to the Motor Vehicle Inspector. He

fairly admitted that he applied for Ex.R2 just a week before giving evidence and it was issued only on 25.10.2011.

15. Thus, it is quite obvious that there was no insurance policy for the offending vehicle on the date of accident on 11.03.2009. Only thereafter, he obtained Ex.R2-Insurance Policy just one week before giving evidence. Ex.R2 though shows that it was issued for the period from 25.11.2008 to 24.11.2009, it is apparently not correct as submitted by the learned counsel for the Insurance Company. It might have been issued for official purpose for paying the compensation or for some other extraneous consideration. The fact remains that Ex.R2 is not a valid document and on the basis of which appellant cannot claim that the vehicle Registration No.TN-23-2394, had valid insurance policy on 11.03.2009. This Court finds from the evidence and documents that the policy was issued covering the period only from 12.03.2009 to 11.03.2010 ie., a day after the accident and thus, it is patently clear that on the date of accident ie., on 11.03.2009, the offending vehicle had no valid insurance policy and thus, fixing the liability on the appellant is correct and appropriate. Thus the points are answered.

16. In the result, this Civil Miscalculation Appeal is dismissed and the award passed in M.C.O.P.No.138 of 2009 on the file of the

Motor Accident Claims Tribunal(Sub-Court), Kulithalai, dated 28.08.2015, is hereby confirmed. No Costs. Consequently, connected miscellaneous petition is closed.

13.10.2023

pm
Index:Yes/No
NCC:Yes/No

To,

1.The Motor Accident Claims Tribunal(Sub-Court),
Kulithalai.

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

G.CHANDRASEKHARAN, J.

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C.M.A(MD)No.331 of 2023

13.10.2023