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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2023

Delivered on : 29.08.2023

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

C.M.A(MD)No.1203 of 2016
and
C.M.P.(MD)No.10557 of 2016

The Branch Manager,
National Insurance Company Limited,
Thoothukudi Town. : Appellant/2nd Respondent

Vs.

1.K.Murugan : 1st Respondent/Petitioner

2.Palanichamy : 2nd Respondent/1st Respondent

**PRAYER:-** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed in M.C.O.P.No.156 of 2006, dated 10.04.2015 on the file of the Motor Accident Claims Tribunal, Sub Court, Palani.

For Appellant : Mr.D.Sivaraman

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For Respondents : Mr.C.K.M.Appaji, for R1.
: No Appearance, for R2.

## JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.156 of 2006, dated 10.04.2015 on the file of the Motor Accident Claims Tribunal, Sub Court, Palani.

2. The appellant/insurer, who was made liable to pay compensation of Rs.83,000/- with interest at 7.5% per annum to the first respondent/claimant for the disability suffered by him consequent to an accident occurred on 28.06.2004, challenged the liability mulcted on it by invoking the doctrine of pay and recovery.

3. The main contention of the appellant/insurer is that the lorry bearing Registration No.TN-28-C-0798 involved in the accident was not at all covered by a valid insurance policy as on the date of accident i.e., on 28.06.2004; that the insurance policy for the lorry got expired on 11.06.2004 and for the period between 11.06.2004 and 30.06.2004, the


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lorry was not covered by valid insurance and that since there was no insurance coverage, the Tribunal erred in applying the principle of pay and recovery and directed the appellant to pay the award amount and then to recover the same from the owner of the vehicle.

4. It is pertinent to note that the accident involving the lorry bearing Registration No.TN-28-C-0798 and tractor bearing Registration No.TN-57-Y-418 and the mode of accident are not in dispute. Moreover, the appellant has not disputed the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the lorry driver.

5. The appellant/insurer in order to prove their defence that the offending lorry was not having insurance coverage on the date of accident, has examined its Administrative Officer Thiru.K.Pandi as R.W.1 and produced the insurance policy for the period prior to the accident and subsequent to the accident under Ex.R.1 and Ex.R.2 respectively and the letter sent by the appellant/insurance company stating that the lorry was not having valid insurance coverage on the date of accident under Ex.R.3.

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6. R.W.1 in his evidence would specifically say that the lorry was insured with the Thoothukudi Branch of the appellant/Insurance company for the period between 11.06.2003 and 10.06.2004 and that subsequently, for the period between 30.06.2004 and 29.06.2005 and that there was no insurance coverage on 28.06.2004, the date on which, the accident was occurred.

7. It is evident from Ex.R1 and Ex.R2 that the lorry involved in the accident was insured for the period from 11.06.2003 at 00:00:00 to midnight of 10.06.2004 and subsequently for the period between 30.06.2004 at 00:00:00 and midnight of 29.06.2005. In Ex.R3, Thoothukudi Branch No.II of the appellant Insurance Company has sent a letter to the Divisional Manager, Dindigul, informing him that the insurance policy was not in force on the date of accident.

8. During cross examination of R.W.1, it was suggested that the premium has been paid on 25.06.2004 itself and that the insurance company has not recorded the payment nor issued any receipt. Admittedly, the first respondent/owner of the vehicle had remained ex-

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parte. The claimant has not taken any steps to prove that the premium was paid on 25.06.2004 itself as suggested by them.

9. Considering the above, it is clearly evident that the lorry bearing Registration No.TN-28-C-0798 was not having valid insurance coverage on the date of accident i.e., on 28.06.2004.

10. In the case of ***the Branch Manager, National Insurance Co.Ltd., Vs. Vijayalakshmi and Others*** reported in ***2017(1)TN MAC 168 (DB),*** Hon'ble 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.

11. 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

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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.

12. 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.

13. 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 again renewed 21 days thereafter, the Hon'ble Supreme Court has held that

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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.

14. Considering the above, it is very much clear that a Motor vehicle insurance policy is effective only for the period specified in the policy and not from the date of expiry of the earlier policy if any, in respect of the same vehicle, issued by the same insurer. It is pertinent to note that the coverage commences from time and the date mentioned in the insurance policy as it is being a special contract. Admittedly, in the case on hand, the policy came to be issued after the accident and so also the coverage and as such the appellant cannot be mulcted with liability to pay compensation by indemnifying the owner of the vehicle.

15. But the Tribunal without considering the above legal position in proper perspective, has mechanically applied the doctrine of pay and recovery. Hence, this Court has no hesitation to hold that the impugned order of the Tribunal applying the doctrine of pay and recovery is very much against the settled legal position and as such, 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.

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16. In the result, the Civil Miscellaneous Appeal is allowed and the impugned award dated 10.04.2015 in M.C.O.P.No.156 of 2006 passed by the Motor Accident Claims Tribunal, Sub Court, Palani, directing the appellant/insurance company to pay compensation and to recover the same form the owner of the vehicle, is set aside. In case, if the award amount was already deposited and was withdrawn by the claimant, then the appellant/Insurer is hereby permitted to recover the same from the owner of the offending vehicle. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

**29.08.2023**

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

1.The Motor Accident Claims Tribunal,
Sub Court, Palani

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

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**K.MURALI SHANKAR,J.**

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Pre-delivery order made in
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