



CMA(MD).Nos.574 & 575 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 30.03.2023

PRONOUNCED ON : 01.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.574 & 575 of 2017

and

CMP(MD).Nos.6083 & 6084 of 2017

CMA.(MD).No.574 of 2017:

Branch Manager
The Oriental Insurance Company Limited
Sathiyamoorthi Nagar
Team Hospital Near
Second Floor, Pudukkottai

.....Appellant

Vs.

1.P.Chinraj

2.C.Senthamarai

3.C.Devi

4.Minor.C.Ramraj

(Minor 4th Respondent is declared as major
and the guardianship of his father/
R1 is discharged vide Court order
dated 30.03.2023)

5.S.Malaiyappan

...Respondents



CMA(MD).Nos.574 & 575 of 2017

CMA.(MD).No.575 of 2017:

WEB COPY

Branch Manager
The Oriental Insurance Company Limited
Team Hospital Near
Sathiyamoorthi Nagar
Pudukottai Town & Taluk
Pudukottai District

.....Appellant

Vs.

1.Minor P.Mathivanan

(Minor first respondent is declared as major
and the guardianship of his father Palanivel
/Natural guardian is discharged vide Court order
dated 30.03.2023)

2.S.Malaiyappan

...Respondents

PRAYER in CMA(MD).No.574 of 2017:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the award of Rs.8,65,000/- (Rupees eight lakhs sixty five thousand only) passed in MCOP.No.759 of 2010 dated 15.06.2016, on the file of the Motor Accident Claims Tribunal Cum Special Court for E.c. & NDPS Act Cases, Pudukottai (Additional District Judge/Presiding Officer) .

PRAYER in CMA(MD).No.575 of 2017:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the award of Rs.3,95,700/- (Rupees three lakhs ninety five thousand seven hundred only) passed in MCOP.No.761 of 2010 dated 15.06.2016, on the file of the Motor Accident Claims Tribunal Cum Special Court for E.c. &



CMA(MD).Nos.574 & 575 of 2017

NDPS Act Cases, Pudukottai (Additional District Judge/Presiding Officer)

For Appellant : Mr.E.Chandrasekaran
in both the appeals

For Respondents : Mr.G.Sridharan
For R1 to R4 in CMA.574 of 2017
and for R1 in CMA.575 of 2017

:Mr.V.K.Vijayaraghavan
For R5 in CMA.No.574 of 2017
For R2 in CMA.No.575 of 2017

COMMON JUDGMENT

Both the appeals have been filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal, Pudukkottai in MCOP.Nos.759 of 2010 and 761 of 2010 primarily challenging the liability and quantum.

2.According to the claimants, two boys namely Lakshmananraj and Mathivanan aged 14 years studying in IX standard, after attending Independence Day function in their School on 15.08.2010, had alighted from the bus in Keelathur Bus Stop. While they were walking on the left corner of the road, an Innova Car belonging to the first respondent was driven by its driver in a rash and negligent manner and had dashed against both the boys. In the said accident, Lakshmananraj sustained



CMA(MD).Nos.574 & 575 of 2017

serious injuries and he passed away in the hospital. The other boy Mathivanan sustained grievous injuries. The parents, brother and sister of Lakshmananraj had filed MCOP.No.759 of 2010 and the injured Mathivanan had filed MCOP.No.761 of 2010 seeking compensation.

3.The owner of the Innova Car had remained exparte and the second respondent insurance company in both the appeals had filed a counter contending that the boys were negligent at the time of crossing of the road. They have further challenged the quantum of compensation as prayed for. In both the claim petitions, the insurance company had filed an additional counter contending that the owner of the Innova Car had issued a cheque towards premium of the insurance policy and the same was dishonoured. Therefore, the insurance policy was cancelled and on the date of the accident, there was no insurance policy. Hence, the insurance company is not liable to pay any compensation.

4.The Tribunal after considering Exhibit P1-F.I.R, Exhibit P4-Motor Vehicle Report, Exhibit P5-Rough Sketch and the evidence of PW1, had arrived at a finding that the accident has happened only due to the rash and negligent driving of the driver of the Innova Car belonging to the first respondent. The Tribunal further found that the legal heirs of



CMA(MD).Nos.574 & 575 of 2017

Lakshmananraj and the injured Mathivanan are entitled to receive compensation due to the death/injuries sustained in the said accident.

5.The insurance company had contended that the previous policy of the insurance company had expired on 20.07.2010. A cheque was issued by the first respondent/ owner of the car for renewal of the premium on 13.07.2010. The said cheque was returned by the Bank due to insufficient funds on 16.07.2010. Immediately, on 20.07.2010, a notice was addressed to the insurer intimating about the cancellation of the policy. A copy was also marked to the Regional Transport Office. The accident has taken place only thereafter on 15.08.2010. Therefore, the insurance policy that was issued based upon the cheque was already cancelled by the insurance company even before the date of accident and the same has also been intimated to the insurer. In such an event, on the date of the accident, there was no subsisting insurance policy and hence, the company is not liable to pay compensation.

6.The Tribunal had relied upon the judgement of the Hon'ble Supreme Court reported in **2012 (5) SCC 234 (United India Insurance Company Vs. Laxmamma & others)** and **2014 (2) TN MAC 733 (SC) National Insurance Co. Ltd., Vs. Balkar Ram & others)** and arrived at a



CMA(MD).Nos.574 & 575 of 2017

finding that the policy was subsisting on the date of accident. The Tribunal further found that though the insurance company contends that the cancellation of the policy was informed to the insured on 20.07.2010 under Exhibit R4, neither a postal receipt nor acknowledgment card has been produced to establish the fact that the cancellation of the policy has been intimated to the insurer. Relying upon the judgment of the Hon'ble Supreme Court, the Tribunal arrived at a finding that the insurance company is liable to pay compensation.

7.The Tribunal had fixed the notional income of the deceased boy at Rs.5,000/- per month and after deducting 1/3rd towards personal expenses, applied the multiplier of 18 and arrived at loss dependency at Rs.7,20,000/-. After adding compensation under conventional head, the total compensation was arrived at Rs.8,65,000/-.

8.As far as the injured claimant is concerned, the Tribunal arrived at a loss of earning power as Rs.2,70,000/- and after adding compensation under the conventional head, arrived at a total compensation of Rs.3,95,700/-. These two awards are under challenge in the present appeals by the insurance company.



CMA(MD).Nos.574 & 575 of 2017

9.The learned counsel for the appellant/insurance company has contended as follows:

(i).The previous policy of the Innova Car of the first respondent had expired as early as on 20.07.2010. For renewal of the policy, a cheque was issued by the insured on 13.07.2010 under Exhibit R1. The said cheque was returned with an endorsement as 'insufficient funds' by the Bank on 16.07.2010 under Exhibit R2 and the same was communicated by the Bank to the Insurance Company on the same day under Exhibit R3.

(ii).He had further contended that in view of dishonour of the cheque, the insurance company had addressed a letter to the insured person on 20.07.2010 under Exhibit R4 intimating him that the policy stands cancelled abinitio due to non receipt of consideration. In the said letter, the Insurance Company had further informed that the cover will commence only after the receipt of fresh remittance of amount through cash or D.D and the insurer was requested to surrender the original motor cover note, policy and receipt.

(iii).The learned counsel for the appellant had further contended that the previous policy had expired on 20.07.2010 and the cheque issued



CMA(MD).Nos.574 & 575 of 2017

for renewal of the policy was dishonoured on 16.07.2010 and it was intimated on 20.07.2010 to the insured person. The accident has taken place only on 15.08.2010. Therefore, according to the learned counsel for the appellant, once the insured person has been informed about the cancellation of policy, thereafter, there is no liability on the part of the insurance company to pay compensation.

(iv).The learned counsel had further contended that Exhibit R4 notice dated 20.07.2010 was also marked to the concerned Regional Transport Office. Therefore, viewed from any angle, the insurance company cannot be mulcted with liability.

(v).According to the learned counsel for the appellant, the Tribunal had not deducted 50% towards personal expenses in view of the fact that the deceased was a bachelor aged 14 years and the quantum fixed by the Tribunal is on the higher side. He had further contended that the quantum of compensation awarded to the injured claimant namely Mathivanan is also on the higher side. Hence, he prayed for allowing the appeal in entirety and exonerate the insurance company.

(vi).The learned counsel for the appellant had relied upon the judgement of the High Court of Chatisgarh in *Miscellaneous Appeal*



CMA(MD).Nos.574 & 575 of 2017

(C).No.1216 of 2007 (United India Insurance Company Ltd., Vs.

Smt.Hirmani Bai & others) dated 03.02.2017 and contended that even in a case where the cancellation of the policy was not informed, the company is entitled to satisfy the award and recover the same from the owner.

10.Per contra, the learned counsel appearing for the respondent/owner of the vehicle had contended that based upon the cheque issued by the owner, a policy has been issued on 13.07.2010 itself. Thereafter, there was no intimation whatsoever from the insurance company that the cheque issued by the insured had got dishonoured. Though it is contended on the insurance company that they have issued a notice on 20.07.2010 under Exhibit R4, no such letter was received from the insurance company.

11.The learned counsel had further contended that the Senior Assistant from the insurance company has been examined as RW1. In his chief examination, he has contended that the notice under Exhibit R4 dated 20.07.2010 was sent by registered post, but no acknowledgement card was produced before the Court. He had further deposed that a copy of the said notice has been marked to the Regional Transport Office,



CMA(MD).Nos.574 & 575 of 2017

Thanjavur. In his cross examination, he has admitted that even the postal receipt was not marked before the Court. Therefore, according to the learned counsel for the respondent/owner of the vehicle, the insurance company has not placed on record any document to establish that a notice was sent to the insured person on 20.07.2010. When no notice has been served to the owner of the vehicle indicating about the cancellation of policy, the policy should be considered to be subsisting on the date of accident and the insurance company is liable to indemnify the owner of the vehicle.

12.The learned counsel for the respondent/owner of the vehicle had further contended that in the additional counter filed by the insurance company, they have not stated about Exhibit R4 notice dated 20.07.2010. Therefore, the said deposition of the staff of the insurance company cannot be taken into consideration.

13.The learned counsel for the respondent had relied upon the judgement of the Hon'ble Supreme Court reported in **2014 (2) TN MAC 733 (SC) National Insurance Co. Ltd., Vs. Balkar Ram & others**) and contended that where intimation to the policy holder was not given by the insurance company before the accident, the insurance company



CMA(MD).Nos.574 & 575 of 2017

cannot be allowed to contend that the policy holder is not holding a valid policy of insurance with regard to the vehicle which met within an accident.

14.The learned counsel had relied upon the judgment of the Hon'ble Supreme Court *in Civil Appeal No.1380 of 2010 (National Insurance Co.Ltd., Vs. Smt. Shivadevi Jadon & others)* dated 06.09.2017 to contend that when the insurance company had failed to intimate the factum of dishonour of the cheque and cancellation of the contract of insurance to the insured, the insurance company cannot distance itself from the liability. In the said judgement of the Hon'ble Supreme Court had further held that the owner and the insurance company are jointly and severally liable for payment of the award amount.

15.The learned counsel had further relied upon the judgment of our High Court reported in *CDJ 2019 MHC 5787 (New India Assurance Co.,Ltd. Chennai & another Vs.C.Pakkiam & others)* dated 28.11.2019 to contend that where the insurance company has not established the intimation of dishonour of the cheque, the insurance company cannot be exonerated from its liability. Even if the policy is cancelled subsequent to



CMA(MD).Nos.574 & 575 of 2017

the accident, the company is liable to pay compensation. The cancellation of the policy would not affect the rights of the third party.

16.The learned counsel for the respondents/claimants had contended that though the officials of the insurance company had contended that the cancellation of the insurance policy was informed through a registered post, they have not chosen to file neither the postal receipt nor the acknowledgment card. Therefore, there is no proof whatsoever that the insurance company has intimated about the cancellation of the insurance policy much before the date of the accident. The insurance policy has not been cancelled even after the accident. Hence, the insurance policy was subsisting on the date of the accident and the insurance company is liable to satisfy the award.

17.The learned counsel for the respondents/claimants had further contended that the Tribunal rightly fixed the quantum with regard to the fatal accident as well as with regard to the injured claimant and therefore, there is no scope for any interference by this Court for reducing the compensation. Hence, he prayed for sustaining the award passed by the Tribunal in entirety.



CMA(MD).Nos.574 & 575 of 2017

18.I have considered the submissions made on either side and perused the material records and the judgements cited on the side of all the parties.

19.The Tribunal has arrived at a categorical finding that the accident has taken place only due to rash and negligent driving of the driver of the Innova Car, based upon the oral and documentary evidence. This Court does not find any reason to interfere in the said findings of the Tribunal.

20.The primary contention on the part of the insurance company is that on the date of the accident, the insurance policy had already been cancelled and the same has also been intimated to the insured. Therefore, the insurance company cannot be mulcted with the liability to pay compensation.

21.Admittedly, a cheque has been issued by the owner of the vehicle on 13.07.2010 for renewal of the insurance policy. The insurance company has also issued a policy on the said date. However, a copy of the policy has not been marked. It is the specific contention of the insurance company that the cheque was returned with a memo issued by the ICICI Bank on 16.07.2010 under Exhibit R2.



CMA(MD).Nos.574 & 575 of 2017

22.A perusal of Exhibit R2 will clearly indicate that the cheque has been returned with an endorsement as 'insufficient funds' and under Exhibit R3 on 16.07.2010, Indian Bank has informed the insurance company that the cheque presented by the insurance company has been dishonoured. These facts are not in dispute. The insurance company had contended that on 20.07.2010, a notice was issued to the owner of the vehicle under Exhibit R4 intimating about the cancellation of the insurance policy.

23.A perusal of deposition of the official of the insurance company who was examined as RW1 discloses that Exhibit R4 was sent by registered post marking a copy to Regional Transport Officer, Thanjavur. However, during cross examination, the official had admitted that he has not chosen to mark either the postal receipt or the acknowledgment card. The RTO official from Pattukkottai has been examined as RW2. He has categorically stated that all the records relating to the vehicle are available only in Thanjavur, Regional Transport Office.

24.A perusal of Exhibit R4, a copy of notice which was furnished by the learned counsel for the insurance company would indicate that Exhibit R4 copy has been marked only to RTO, Thanjavur. When a copy



CMA(MD).Nos.574 & 575 of 2017

of Exhibit R4 dated 20.07.2010 is marked to RTO, Thanjavur, it is not known why R.T.O official from Pattukottai was examined as RW2. If an official of R.T.O, Thanjavur has been examined, it could have been established whether a letter dated 20.07.2010 was really sent to the owner of the Car or not. It is clear that the insurance company has not chosen to either mark the postal receipt or acknowledgment card or chosen to examine the RTO official from Thanjavur.

25.A combined reading of all these facts would clearly establish that Exhibit R4- alleged intimation letter has not been sent to the owner of the vehicle.

26.**Section 147 (5) of the Motor Vehicles Act, 1988** is extracted as follows:

“(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.”



WEB COPY

27. Section 149(1) of the Motor Vehicles Act, 1988 is extracted as follows:

“149. Duty of insurers to satisfy judgements and awards against persons insured in respect of third party risks- If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (l) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.”

28. Now let us consider the judgement of the Hon'ble Supreme Court and our High Court which have interpreted the above said provisions:



CMA(MD).Nos.574 & 575 of 2017

29. In ***(1998) 1 SCC 371 (Oriental Insurance Co., Ltd., Vs. Inderjit Kaur and others)***, the Hon'ble Supreme Court has held in Paragraph Nos. 9, 10 and 12 are as follows:

9. We have, therefore, this position. Despite the bar created by [Section 64-VB](#) of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium therefor. By reason of the provisions of [Section 147\(5\)](#) and [149\(1\)](#) of the Motor Vehicles Act, the appellant became liable to identify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

10. The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured.

12. It must also be noted that it was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of [Section 64-VB](#) of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant. “

30. In ***(2000) 3 SCC 195 (New India Assurance Co., Ltd., Vs. Rula and others)*** in Paragraph No.13, the Hon'ble Supreme Court has



held as follows:

WEB COPY

“13.This decision, which is a 3-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the Insurance Policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the issuance of the Policy on the date on which the accident took place. If, on the date of accident, there was a Policy of Insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of Insurance Policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party.”

31.In (2008) 2 TN MAC 448 (SC) (National Insurance Co.Ltd., Vs. Abhaysing Pratapsing Waghela & others), the Hon'ble Supreme Court in Paragraph Nos.16 and 17 have held as follows:

“16.... If a Cover Note is issued, it remains valid till it is cancelled. Indisputably, the insurance policy was cancelled only after the accident took place. A finding of fact, therefore, has been arrived at that prior to the deposit of the premium of insurance in cash by the owner of the vehicle, the cover note was not cancelled.



WEB COPY

17. *It is in the aforementioned situation, we are of the opinion, that the judgment of the High Court cannot be faulted. No doubt, a contract of insurance is to be governed by the terms thereof, but a distinction must be borne in mind between a contract of insurance which has been entered into for the purpose of giving effect to the object and purport of the statute and one which provides for reimbursement of the liability of the owner of the vehicle strictly in terms thereof. In that limited sense, a contract of insurance entered into for the purpose of covering a third party risk would not be purely contractual. We may place on record that an ordinary contract of insurance does not have a statutory flavour. The Act merely imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act as also the Contract. So far as the liability of the insurance company which comes within the purview of Sections 146 and 147 is concerned, the same subserves a constitutional goal, namely, social justice. A contract of insurance covering the third party risk must, therefore, be viewed differently vis-a-vis a contract of insurance qua contract.”*

32. The Hon'ble Supreme Court in a judgment reported in **(2012) 5 SCC 234 (United India Insurance Company Limited Vs. Laxamma and others)** in Paragraph Nos.26 and 27 have held as follows:

“26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque



towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Section 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.

27. Having regard to the above legal position, insofar as the facts of the present case are concerned, the owner of the bus obtained the policy of insurance from the insurer for the period 16.04.2004 to 15.04.2005 for which premium was paid through cheque on 14.04.2004. The accident occurred on 11.05.2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13.05.2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on 21.05.2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy the



CMA(MD).Nos.574 & 575 of 2017

award of compensation passed in favour of the claimants”

WEB COPY

33.The Hon'ble Supreme Court in a judgement reported in **2013 SCC Online 592 (National Insurance Co. Ltd., Vs. Balkar Ram & others)** has held as follows:

“The Appellant/Insurance Company assailed the award passed by the Tribunal essentially on the ground that the cover note for the policy of insurance was issued on 7.04.2000 for which a cheque was submitted by the owner. However, the cheque was dishonoured by the bank on 17.04.2000. Subsequently, the vehicle which was insured with the appellant-insurance company met with an accident on 19.04.2000. The appellant-insurance company, therefore, contended that as the policy of insurance could not be held to be a valid document in view of the fact that the cheque towards the policy had been dishonoured even before the accident had taken place, the insurance company was not liable to indemnify the claimants by paying the amount which fell into its share as per the Tribunal's award and it is the owner which is liable to pay the entire amount of compensation to the respondents/claimants.

However, we compliment Ms. Kiran Suri, learned counsel for the appellant for cutting short the controversy by fairly pointing out the ratio of the judgment (2012) 5 SCC 234 titled United India Insurance Co. Ltd. Vs. Laxmamma & Ors. wherein it has been held that the insurance company is liable to satisfy the



WEB COPY

award if the intimation regarding the dishonour of the cheque and cancellation of policy is communicated to the policy-holder after the date of the accident. Thus, the defence of the insurance company that the policy of insurance was not valid since the cheque had been dishonoured prior to the accident would not exonerate them from making the payment of compensation. In this matter, admittedly the accident had taken place on 19.04.2000 and the cheque although had been dishonoured prior to the accident on 17.04.2000, the intimation to the policy-holder had been given by the insurance company on 26.04.2000, in view of which the insurance company cannot be allowed to contend that the policy-holder was not holding a valid policy of insurance in regard to the vehicle which met with an accident. Admittedly, the policy-holder had already issued another cheque substituting the cheque which had earlier been dishonoured.”

34.The Division Bench Judgment of our High Court in a judgment reported in **2009 (1) TN MAC 608 (DB) (Oriental Insurance Co.Ltd. Cuddalore Vs. M.Pushpan and others)** in Paragraph Nos. 18, 25 and 26 have held as follows:

18.....As stated, the accident took place on 24.8.2003 and the cancellation of the Policy was on 3.9.2003 i.e. much after the accident. Therefore, it is to be seen that on the date of the accident, the Insurance Policy was not cancelled. If the Insurance Company



had been diligent, they could have asked from their Bankers about the dishonour of the cheque at the earliest point of time and intimated the Insured, the Insured would have had an option to immediately remit the premium. Therefore, we hold that the Insurance Company is liable to settle the claim.

*25. In a recent decision of the **Full Bench of this Court reported in Branch Manager, United India Insurance Co.Ltd., Vs. Nagammal 2009 (1) TN MAC 1 (FB): 2009 (1) CTC 7**, it had an occasion to consider the dictum of 'Pay and Recovery': The question that was referred for consideration before the larger Bench in the said matter is to the following effects:*

Thus as held by the Honble Full Bench it is the discretion of the Appellate Court depending upon the facts and circumstances of the case whether the doctrine of pay and recover should be applied. In the earlier part of this Judgment we have upheld the conclusion of the Tribunal that the accident occurred due to the negligence of the Tata Sumo Vehicle and that the Insurance Policy was admittedly cancelled only after the date of accident. From the chronology of dates given by the Learned Counsel for the Appellant it is seen that no steps were taken by the Insurance Company for nearly one month after their bankers received intimation regarding the dishonour of the cheque. Therefore, the Insurance Company have to be held responsible for their own act and cannot be heard to say that even though the accident occurred prior to the cancellation of the policy they have to be absolved of their liability. It is to be noted that the



CMA(MD).Nos.574 & 575 of 2017

Honble Full Bench had stated that the doctrine of pay and recover has not been applied in all cases by the Honble Supreme Court in respect of matters which are not strictly covered under [Section 149](#) (4) and 149 (5) and it has been applied by the Honble Supreme Court depending upon the facts and circumstances of a particular case. Therefore we are not inclined to grant the prayer sought for by the Learned Counsel for the Appellant to pay and recover. In the light of the decision rendered by the Full Bench of our Court, we are unable to accept the submissions made by the learned counsel for the appellant.

26.It is to be noted that the Insurance Company was not diligent in the sense that the fact of dishonour was made known to the insured belatedly. He was therefore perhaps denied the opportunity to have the policy renewed immediately thereafter.....”

35.The preposition of law laid down by the Hon'ble Supreme Court and the Division Bench of our High Court could be summarised as follows:

(i). A contract of insurance entered into for the purpose of covering a third party risk would not be purely contractual. An ordinary contract of insurance does not have a statutory flavour. The Motor Vehicles Act merely imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act as also the Contract.



CMA(MD).Nos.574 & 575 of 2017

However, so far as the liability of the insurance company which comes within the purview of Sections 146 and 147 are concerned, the same has to be viewed differently vis-a- vis a contract of insurance qua contract.”

(ii).Once the insurance company had issued a policy of insurance without receiving the premium, in view of the provisions of Sections 147(5) and 149(1) of the M.V.Act, the insurance company is liable to indemnify the owner in respect of the statutory liability notwithstanding its right to avoid or cancel the policy for the reason that the cheque issued for payment of the premium have not been honoured.

(iii). The liability of the insurance company to indemnify the third party continues to subsists in view of the provisions of Section 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the insurance company and intimation of such cancellation has reached the insured before the accident. To avoid liability to pay compensation arising out of the accident, the insurance company ought to have intimated the insured about the cancellation of the policy before the date of the accident. Even if the intimation reached the insured person after the accident, the company is still liable. The burden is upon the insurance company to establish that they have intimated the insured person about



CMA(MD).Nos.574 & 575 of 2017

the cancellation of the insurance policy before the date of accident.

WEB COPY

(iv).Only in cases where the dishonour of the cheque and the cancellation of the policy are intimated to the insured person before the accident, the insurance company would not be liable to satisfy the award.

36.Section 149(1) of the Motor Vehicles Act clearly points out that the insurer is liable to satisfy the judgement and award against the persons insured in respect of third party risk not withstanding the fact that that company may be entitled to avoid or cancel or may be avoided or cancelled the policy. In case if no intimation has been issued by the insurance company to the insured before the accident, they will not be entitled to even claim pay and recover in view of the Division Bench judgment of our High Court in a judgement reported in **2009 (1) TN MAC 608 (DB) (Oriental Insurance Co.Ltd. Cuddalore Vs. M.Pushpan and others)** and therefore, the insurer and insured are jointly and severally liable to satisfy the award.

37.In view of the legal provisions culled out from the Judgments of the Hon'ble Supreme Court and the Division Bench of our High Court, this Court is of the view that though the cheque issued towards payment of premium for renewal of the policy has been dishonoured, the policy



CMA(MD).Nos.574 & 575 of 2017

already issued has not been cancelled and intimated to the insurer before the date of the accident. Therefore, this Court is of the view that the liability fixed by the Tribunal on the insurance company to satisfy the award does not call for any interference. This Civil Miscellaneous Appeals are dismissed. The claimants are permitted to withdraw the award amount by filing an appropriate application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

01.06.2023

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

To

1. The Motor Accident Claims Tribunal Cum Special Court
for E.c. & NDPS Act Cases,
/ Additional District Judge/Presiding Officer, Pudukottai

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



WEB COPY



CMA(MD).Nos.574 & 575 of 2017

R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgement made in
C.M.A(MD)Nos.574 & 575 of 2017
and
CMP(MD).Nos.6083 & 6084 of 2017

01.06.2023