



C.M.A(MD).No.852 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.06.2023

PRONOUNCED ON : 27.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.852 of 2017

and

C.M.P(MD).No.9041 of 2017

The Manager & Proprietor
Arasu Autos, (New India Assurance Co.,Ltd., agent)
Having its registered office at
No.415/4, Trichy-Thanjavur
Main Road, Vallam 613 403
Thanjavur District

... Appellant

vs.

1.Gladstone

2.The Manager
New India Assurance Co.,Ltd.,
Represented by its Manager
its office at No.87
Market Road, East Gate
Thanjavur

3.Saroja

4.Dhanalakshmi

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5.Narayanasamy

6.Venkatraman

7.Selvakumari

...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to call for the records of the lower Court and consider the merits of the case and to set aside the award passed by the Tribunal in MCOP.No.218 of 2016 dated 02.06.2017.

For Appellant : Mr.J.Alaguram Jothi

For Mr.P.Jaganathan

For R1 : Mr.N.Shanker Ganesh

For R2 : Mr.B.Rajesh Saravanan

For R3 to R7 : No appearance

JUDGMENT

The present appeal has been filed by the insurance company agent of New India Assurance Company Limited challenging the award passed by the Motor Accident Claims Tribunal, Thanjavur in MCOP.No.218 of 2016.

2.According to the claimants, when the deceased was attempting to cross the road at about 12.00 noon on 31.01.2016, a two wheeler which is



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owned by the first respondent and insured with the second respondent was driven in a rash and negligent manner and dashed against the deceased person. He succumbed to the injuries on 06.02.2016. The claimants have further contended that the deceased was aged 65 years and he was a coolie earning a sum of Rs.10,000/- per month. The claimants have prayed for a compensation of Rs.30,00,000/-.

3.The second respondent had filed a counter contending that the accident has happened only due to the rash and negligent driving on the part of the deceased who had crossed the road negligently. They have further contended that the two wheeler was not insured with the respondent on the date of the accident and the driver was not having a valid driving licence. The accident has happened on 31.01.2016, but the policy for the vehicle was issued only with effect from 01.02.2016. Therefore, on the date of the accident, there was no insurance policy and hence, they are not liable to pay any compensation.

4.The third respondent who is the insurance agent had filed a counter contending that the premium received from the owner of the vehicle was credited to the account of the insurance company on



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31.01.2016 itself. However, the company has chosen to issue a policy belatedly with effect from 01.02.2016. Therefore, the insurance company alone is liable and they have been unnecessarily made as parties to the claim petition.

5.The Tribunal after considering the oral and documentary evidence, arrived at a conclusion that the accident has happened only due to the rash and negligent driving on the part of the two wheeler. The Tribunal had further arrived at a finding that the vehicle owner has paid the renewal premium amount to the insurance agent on 19.01.2016 and a receipt has also been issued under Exhibit R2. However, the insurance agent has credited the said amount to the insurance company only on 31.01.2016. The Tribunal further found that the third respondent (insurance agent) has to prove that there is a privity of contract between him and the insurance company. The Tribunal further found that the third respondent had failed to establish the fact that he has received the premium from the first respondent to renew the insurance policy. If there is any agreement between the insurance agent and the insurance company, the agent is entitled to file appropriate suit as against the



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insurance company to get the above said amount. On the said finding, the Tribunal mulcted the entire liability upon the insurance agent.

6.The Tribunal further found that the age of the deceased was 65 and fixed the notional income at Rs.6000/- per month and deducted 1/4th towards personal expenses. After applying the multiplier of 7, total loss of income of the deceased was arrived at Rs.3,78,000/-. A sum of Rs.25,000/- was awarded towards funeral expenses, a sum of Rs.1,00,000/- was awarded towards loss of consortium to the first claimant, a sum of Rs.10,000/- was awarded towards loss of estate, another sum of Rs.10,000/- was awarded towards transport charges and a sum of Rs.10,000/- was awarded to each one of the other claimants under the head of loss of love and affection. Totally, a sum of Rs.5,63,000/- was awarded with 7.5% interest. This award is under challenge by the insurance agent.

7.The learned counsel appearing for the appellant/insurance agent had contended as follows:

(a).The Arasu Autos is the authorized insurance agent of New India Assurance Company Limited for receipt of premium for new as



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well as old vehicles for renewal / revival of policy.

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(b).The premium amount received from the owner of the vehicle was properly credited to the account of the insurance company on 31.01.2016 even before the accident had taken place.

(c).After receiving the premium on 31.01.2016, a policy has been issued by the insurance company with effect from 01.02.2016. Once the company receives the premium, they cannot postpone the date or time of the commencement of the said policy. Hence, on the date and time of the accident, a policy was subsisting and therefore, the insurance company alone is liable to pay the said compensation.

(d).The insurance company itself has produced the contract with the insurance agent as Exhibit R7. The insurance official who was examined as RW2 has categorically admitted that the appellant is the authorised agent of the insurance company. Therefore, the Tribunal was not right in holding that the appellant has not established that he is the authorised agent of the insurance company.

(e).Under the Motor Vehicles Act, either the driver, owner or the insurance company could be mulcted with liability to pay compensation



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the account of the insurance company prior to the accident. Therefore, the Tribunal was right in mulcting the liability upon the insurance agent especially when there was no subsisting policy on the date and time of the accident. Hence, he prayed for confirming the award passed by the Tribunal.

10.The learned counsel appearing for the claimants had contended that the owner of the vehicle had promptly paid the premium on 19.01.2016 and the insurance agent has also issued a receipt under Exhibit R2. The insurance agent is the agent of the insurance company and therefore, any premium paid to such an agent would fix the liability upon the insurance company from the date and time of the payment of the premium. Even assuming that there was any delay on the part of the agent in remitting the amount to the company, the Arasu Autos being an agent of the insurance company, the principal is liable. Any payment to the insurance agent should be treated as a payment directly to the insurance company. After receipt of premium, if there is any delay on the part of the insurance company in issuing the policy, the same cannot be taken advantage of by the insurance company. The third party insurance



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is a statutory insurance as per the Motor Vehicles Act and therefore, the insurance company cannot take their own time in issuing the policies after receipt of premium. In case of any delay in issuance of policy documents, the payment of premium itself would be enough to fix the liability upon the insurance company especially in case of renewal premium. Hence, he prayed that the award fixed against the insurance agent may be set aside and the liability may be fastened upon the insurance company.

11.I have considered the submissions made on either side and perused the material records.

12.There is no dispute with regard to the fact that the deceased had passed away in a road traffic accident on 31.01.2016 at 12.00 noon due to rash and negligent driving on the part of the first respondent's vehicle. The only dispute that was considered by the Tribunal is whether an insurance policy was subsisting on the date of the accident or not?.

Dispute relating to Agency:

13.At the time of the accident, the vehicle was driven by the first respondent who is the owner of the said vehicle. According to him, the



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previous insurance policy had expired on 18.01.2016 and he had paid the renewal premium to the insurance agent (appellant) on 19.01.2016 and a receipt was issued by them under Exhibit R2. It could be seen from the records that the insurance agent has credited the said amount to the insurance company only on 31.01.2016. It is not clear whether the premium was credited before the accident or after the accident. The insurance company had issued a policy with effect from 01.02.2016.

14.According to the appellant/insurance agent, he is the authorised agent of New India Assurance Company Limited for receiving premium for insurance policy. The official of the insurance company who was examined as RW2 has categorically admitted in his cross examination that the appellant is their authorised insurance agent. However, the contention of the insurance company is that the agent was authorised to receive premium only for brand new vehicles which are sold by them but not to receive revival premium.

15.The Tribunal had put a specific question whether the official could produce any record to prove the contract between the agent and the insurance company and the official had produced Exhibit R7-contract.

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This fortifies the fact that the appellant is the authorised agent of the insurance company. The Tribunal has also put a specific question to the official whether there are any records to show that the agent is not authorised to receive renewal premium. The official has evasively replied that the premium amount has to be credited to the company's account within 7 days.

16. A perusal of Exhibit R7 also discloses that there is no such embargo on the agent to receive renewal premium. The agent had received renewal premium on 19.01.2016 and he has credited to the insurance company's account on 31.01.2016. Accepting the said renewal premium through an agent, the insurance company has issued a policy with effect from 01.02.2016. Therefore, it is clear that even assuming that the receipt of renewal premium by the agent is an unauthorised act, it stood ratified by the principal. As contemplated under Section 196 of the Contract Act, once an unauthorised act is ratified by the principal, the same effects would follow as if they had been performed with authority. It is not the case of the insurance company that the renewal premium received by the insurance agent and credited to the company was rejected



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on the ground that it is an unauthorised act. On the other hand, the insurance company has accepted the renewal premium received and credited by their agent. Therefore, the contention of the insurance company that their agent was not authorised to receive renewal premium is not legally sustainable.

17. Though the agent had disputed the receipt of premium on 19.01.2016 in their counter, during cross examination as RW3, the agent has categorically admitted the receipt of premium and issuance of Exhibit R2 receipt on 19.01.2016. It is also an admitted fact that the premium was credited to the company's account only on 31.01.2016. Therefore, certainly there is a fault on the part of the insurance agent in remitting the amount to their principal. The accident has taken place at 12.00 noon on 31.01.2016. It is not clear from the records whether the premium amount was credited to the insurance company's account before the accident or after the accident on the said date.

Vicarious Liability of the Insurance Company:

18. Whether the delay on the part of the agent in remitting the amount to the account of their principal would affect a third party namely

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the owner of the vehicle is the issue to be decided.

19.The insurance official who was examined as RW2 has admitted that the said Arasu Autos is their authorised agent. Therefore, it is clear that the principal is vicariously liable for the default committed by the agent.

20.The Division Bench of our High Court in a judgement reported in **2004 (2) CTC 522 (The National Insurance Company Limited Vs.M.Nandan and another)** had an occasion to deal with a similar situation. In the said case, an accident had taken place at 1.30 p.m on 12.02.1992. Though the authorised agent of the insurance company had received the premium, he had not remitted the same to the insurance company. In the background of the said facts, the insurance company had contended that since the amount was not remitted by the agent to the their account and a fraud was committed by their agent and therefore, they are not liable to pay the said compensation. In the said judgement, Paragraph Nos. 9 and 10 are extracted as follows:

“9. When admittedly Ganesan is the Agent of the Insurance Company and received the premium from Gurusamy and in fact



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that Gurusamy was also given a policy, we are shocked and surprised to see, how the Insurance Company can disown its liability, more so when it does not suspect the bona fides on the part of Gurusamy. It is not the case of the Insurance Company that as per rules/conditions of the Policy, whenever a client receives a Policy from the agent, he has to go over to the office and contact the -manager or any named officer to show the policy which he has received to ascertain its genuineness.

10. Let us turn to analyse the legal position. The word 'agent' is derived from the Latin word "agere" which means 'to do'. Thus, an agent is a person, who acts for another whether by express or implied consent. The general rule is that whatever a person may do himself, he may authorize another to do for him in accordance with the maxim "qui facit per alium facit perse" meaning he who does anything by another, does it by himself.....

The principal is liable for the fraud of his agent acting within the scope of his authority. Whether the fraud is committed for the benefit of the principal or for the benefit of the agent.....”

21.The judgement of the High Court of Punjab and Haryana at Chandigarh reported in **2020 ACJ 1820 (Iffco Tokio General Insurance**



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Company Ltd., Vs. Sushil Kumar and others) has held that merely for the reason that the agent of the company had not deposited the premium with the insurer in itself shall not be enough to solve the insurer from its liability to pay the compensation to the third party. The High Court has further held that if there is a dispute between the principal and the agent, the insured cannot be made to suffer.

22.In view of the judgement of the Hon'ble Division Bench and the judgment of the Punjab and Haryana referred to supra, this Court is of the considered opinion that the appellant being an authorised agent and received premium 10 days prior to the accident, but remitted the same on the date of the accident, the insurance company cannot get exonerated for the fault committed by its own agent.

Commencement of Policy:

23.The issue now that arises for consideration is when the premium has been credited to the account of the insurance company only on 31.01.2016 and the policy having been issued on with effect from 01.02.2016, whether the said policy would cover an accident that has taken place at 12.00 noon on 31.01.2016. The Division Bench of our



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High Court in a judgment reported in **2003 (2) CTC 72 (M/s.United India Insurance Company Limited Vs. S.Viswanathan and another)** in

Paragraph Nos. 5 and 6 has held as follows:

5.The argument of the counsel for the respondents has force. Though from Ex.R.1, it appears that the cheque was presented only on 2.3.1992, the date, as found in Ex.R.1, has been explained by the Officer of the second respondent itself as the date which refers the date subsequent to the realisation of the amount. Ex.R.4 also supports this argument. Therefore, we are of the view that the date mentioned in Ex.R.1 is the date which is subsequent to the realisation of the amount and not the date on which the cheque was presented to the Insurance Company.

6. In the circumstances, even though there are some discrepancies in the evidence of R.W.1, the owner of the motor vehicle, in view of the specific admission by R.W.2 and in view of the decision of the Honourable Supreme Court referred to by the Tribunal itself that when there are some discrepancies with respect to the terms of the insurance policy, the Court has to lean in favour of the insured. Therefore, we are of the view that the case of the owner of the vehicle is acceptable and from the evidence of the owner of the vehicle it is clear that the cheque has been handed over on 20.2.1992 itself, and therefore on the



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date of the accident, i.e. On 23.2.1992, there was a valid insurance coverage.....”

24. A learned Single Judge of this Court in a judgement reported in **2001 ACJ 2022 (Oriental Insurance Company Ltd., Vs. Vedathal and another)** in Paragraph Nos. 27 and 28 has held as follows:

“27. As stated earlier, a bare reading of Section 64-VB of the Insurance Act, 1938 would make it manifestly clear that the insurance coverage should start from the date of the payment of premium whether in cash or by cheque or by money order.....

28. When that is the case, there is no difficulty in the present case to hold that the date of the receipt of the premium by the insurance company directly shall be considered to be the date of effective date of commencement of the policy.”

25.The Hon'ble Supreme Court in a judgment reported in **(2009) 13 SCC 370 (Balbir Kaur and others Vs. New India Assurance Company Limited and others)** in Paragraph No.11 has held as follows:

“11.....A policy, however, which is issued from a future date must be with the consent of the holder of the policy. The



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insurance company cannot issue a policy unilaterally from a future date without the consent of the holder of a policy.....”

26. Admittedly, in the present case, the premium was not paid for a new policy, but for renewal of the policy. The insurance company in their counter had also admitted that the vehicle had a subsisting policy up to 18.01.2016. The premium for the renewal policy has been paid to the insurance agent on 19.01.2016. Due to the fault on the part of the agent, the premium has been remitted to the insurance company only on 31.01.2016. The policy has been issued with effect from 01.12.2016. It is the contention on the side of the insurance company that the policy will take effect from the date and time mentioned therein and not from any prior date.

27. The learned counsel for the second respondent/insurance company had relied upon a Division Bench judgement of our High Court reported in **2017 (1) TN MAC 168 (DB) (The Branch Manager, National Insurance Company Ltd., Vs. Vijayalakshmi and others)**. The judgement of the Hon'ble Supreme Court reported in **(2009) 13 SCC 370**



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(Balbir Kaur and others Vs. New India Assurance Company Limited

and others) has not been brought to the notice of the Hon'ble Division Bench. Therefore, the Division Bench has taken a view that the coverage would commence only from the date and time mentioned in the policy of the insurance. However, the Hon'ble Supreme Court in the judgement cited supra has held that whenever the insurance company decides to issue from a future date, it must be consent with the holder of the policy. The insurance company cannot issue a policy unilaterally from a future date without consent of the holder of the policy.

28.In view of the Division Bench judgement cited supra, as far as the renewal policies are concerned, they take effect from the date of payment of premium to the authorised agent or the insurance company as the case may be. Merely because the agent has remitted the premium amount belatedly or the company has issued a policy from a future date, that will not absolve the insurance company from its liability. Only in cases of fresh insurance policy(not a renewal one), commencement of the policy would be from date and time mentioned in the policy.

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Therefore, this Court is of the considered opinion that when the premium amount has been paid to the authorised agent on 19.01.2016, the coverage commences from the said date and time. The delay in remittance by the agent is the dispute between the agent and the principal for which a third party cannot be made to suffer.

29.It is not the case of the insurance company that the owner of the vehicle had colluded with his agent and had created Exhibit R2 premium receipt. In fact, when the premium amount was remitted by the agent on 31.01.2016, it has been rightly accepted and a policy has been issued by the company. Therefore, it is clear that any dispute between the agent and the principal has to be sorted out in an appropriate proceeding and not in a claim petition filed by a third party based upon the insurance policy. In case, if the insurance company finds that their agent had been negligent in belatedly remitting the said amount causing loss to the company, it is for the insurance company to initiate independent proceedings.



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30.As per Section 146 of the Motor Vehicles Act, a motor vehicle cannot be used in a public place, unless it is covered by a policy of insurance with regard to third party risk. Therefore, whenever premium is remitted by a owner of the vehicle, a statutory duty is cast upon the insurance company to issue the policy. In the light of the said legal background, this Court is of the opinion that the insurance company does not have any power whatsoever to postpone the date of commencement of the policy after receipt of the premium either directly or through their agent. The authorised agent having received the premium on 19.01.2016, it should be deemed that the principal namely the insurance company had received the premium on the said date. The insurance company cannot take advantage of non issuance of the policy or postponement of commencement of the policy. Therefore, this Court finds that on the date of the accident, the insurance was subsisting covering the offending vehicle.

Award against Insurance Agent:

31.The Tribunal in a claim petition filed by the third party has unnecessarily entered into a dispute between the agent and the principal



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and mulcted the liability upon the agent. The insurance agent is no way responsible for the death of a person arising out of an accident. The only fault on the part of the agent is that having received the premium, he has not remitted it to the company in time. Section 168 of the Motor Vehicles Act clearly specifies that the award amount shall be paid either by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them as the case may be. The insurance agent does not fall under any one of the categories. The insurance agent cannot be treated to be an insurer for passing an award under Section 168 of the Motor Vehicles Act. Therefore, this Court is of the opinion that the Tribunal has erred in mulcting the liability upon the insurance agent, exonerating the principal namely the insurance company.

Conclusion:

32.In view of the above said deliberations, this Civil Miscellaneous Appeal is partly allowed exonerating the appellant and fixing the liability upon the second respondent in the appeal/second respondent in the claim petition namely the insurance company to satisfy

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the award passed by the Tribunal. In other respects, the award of the Tribunal stands confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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1.The Motor Accident Claims Tribunal,
/Special District Court, Thanjavur.

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



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.852 of 2017
and
C.M.P(MD).No.9041 of 2017

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