



PIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA Nos.1169 & 1170 of 2023
and CMP Nos.11457 & 11458 of 2023

CMA No.1169 of 2024

The National Insurance Company Ltd
Situated at Villupuram.

..Appellant

.VS.

1.Sanjai

2.Natarajan

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 20.9.2022 made in M.C.O.P.No.453 of 2018, on the file of the Motor Accidents Claims Tribunal (III Additional District Judge), Villupuram @ Kallakurichi.

CMA No.1170 of 2024

The National Insurance Company Ltd
Situated at Villupuram.

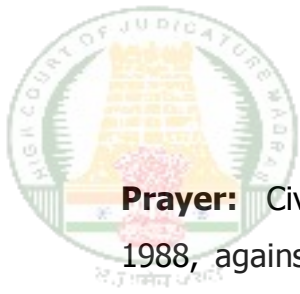
..Appellant

.VS.

1.Ananthi

2.Natarajan

..Respondents



Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 20.9.2022 made in M.C.O.P.No.454 of 2018, on the file of the Motor Accidents Claims Tribunal (III Additional District Judge), Villupuram @ Kallakurichi.

For Appellant : Mr.D.Bhaskaran
(Both CMAs)

For Respondents : Mr.K.Raj Kumar
(Both CMAs) for M/s.R.Bharath Kumar
for R2

R1 – No appearance

COMMON JUDGMENT

The issue that has been raised in both these appeals are common and therefore, both these appeals are taken up together, heard and disposed of through this common order.

2.The Insurance Company has filed these appeals against the award passed by the Motor Accidents Claims Tribunal (III Additional District Judge), Villupuram @ Kallakurichi, in M.C.O.P.Nos.453 of 2018 and 454 of 2018, dated 20.09.2022.

3.The case of the claimants is that the claimant in M.C.O.P.No.453 of 2018, was the rider of the two wheeler and the claimant in M.C.O.P.No.454 of 2018 was the pillion rider in the two wheeler and on 8.7.2018 they were travelling at Salem – Chennai National High Road. On the place of occurrence, the Car belonging to the 1st respondent was driven in a



rash and negligent manner and it dashed on the two wheeler and as a result of which, the rider and the pillion rider fell down. The claimant in M.C.O.P.No.453 of 2018 sustained (1) Laceration over left temporal region and (2) Multiple abrasion over the face, abdomen, toes and hands. The claimant in M.C.O.P.No.454 of 2018, sustained hip, spinal cord fracture and injuries all over the body. It is under these circumstances, both the claimants have filed independent claim petitions seeking for payment of compensation.

4.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. Having reached such a conclusion, the Tribunal fixed a total compensation of a sum of Rs.1,09,968/- in M.C.O.P.No.453 of 2018 and in M.C.O.P.No.454 of 2018, a total compensation of a sum of Rs.1,09,968/-. These amounts were directed to be paid with interest at the rate of Rs.7.5.% p.a.

5.The Insurance Company questioning their very liability to pay the compensation fixed by the Tribunal, has filed these appeals before this Court.

6.Heard Mr.D.Bhaskaran, learned counsel for the appellant – Insurance Company and Mr.K.Raj Kumar for M/s.R.Bharath Kumar, learned counsel for the 2nd respondent. The 1st respondent has been served with notice and the name has also been printed in the cause list. There is no appearance either in person or through counsel.



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7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.The learned counsel for the appellant submitted that the policy was issued on 4.10.2017 for the period from 4.10.2017 to 3.10.2018. Premium was paid by way of cheque and the same got dishonoured on 4.10.2017. The dishonour of cheque was informed on 11.10.2017 both to the owner of the vehicle as well to the RTO. The intimation was received on 7.11.2017. Thus the contractual relationship between the Insurance Company and the insurer came to an end. The accident had taken place on 8.7.2018 and at that point of time, the offending vehicle was not covered by any policy and therefore, the Insurance Company cannot be made liable in this case. It was therefore submitted that the Tribunal went wrong in applying the pay and recovery principle in this case.

9.The learned counsel in order to substantiate his submissions relied upon the following judgments:

- (a) Deddappa and others .v. Branch Manager, National Insurance Company reported in (2008) 2 SCC 595.
- (b) United India Insurance Company .v. Laxmamma and others reported in (2012) 5 SCC 234.
- (C) National Insurance Co.Ltd., .v. D.Kothai Nayaki and others reported in 2023(1) TN MAC 646.
- (d) CMA No.2439 of 2019, dated 29.11.2023.



10. Per contra, the learned counsel for the owner of the vehicle, who is the 2nd respondent in these appeals submitted that insofar as the third parties are concerned, the Insurance Company having issued the policy cannot escape from the liability of paying the compensation and it will always be left open to the Insurance Company later to recover the compensation amount from the owner of the offending vehicle. The learned counsel in order to substantiate his submission relied upon the judgment of the Apex Court in Oriental Insurance Co.Ltd., .v. Inderjit Kaur and others reported in (1998) 1 SCC 371

11. In the case in hand there is no dispute on facts. In fact, the Tribunal while dealing with this issue has given a categorical finding that the intimation sent by the Insurance Company has been received by the owner of the vehicle and the RTO on 7.11.2017 and thereafter, the owner of the vehicle did not take any steps to renew the policy. With these admitted facts, the issue on hand is squarely covered by the earlier Judgments of the Apex Court and this Court. It is now consistently held that in the absence of a valid insurance policy on the date of the accident and where the insurance policy has been cancelled on account of dishonour of the cheque after due intimation to the owner of the vehicle regarding the dishonour of the cheque, the contractual obligation of the insurance company gets snapped and thereafter, the insurance company cannot be made to pay the compensation and recover the same from the owner of the vehicle.

12. The judgment that was relied upon by the learned counsel for the 2nd respondent will not apply to the facts of the present case. That was a case where the owner atleast attempted to renew the policy by paying cash and in the meantime, an



accident had taken place. Under such circumstances, the Apex Court applied the pay and recovery principle. The law that is pronounced in a case will depend upon the facts of each case and one slight variation of a fact, will result in a sea change in applying the law pronounced in that order.

13.It will not lie in the mouth of the owner of the offending vehicle to state that the policy was originally given by the insurance company and therefore, the insurance company must be made liable to pay the compensation and thereafter it can be recovered from the owner of the offending vehicle. The law is that as on the date when the accident takes place, there must be a valid insurance policy. Moreover, when a policy is cancelled by virtue of the cheque being dishonoured, the contractual obligation of the insurance company comes to an end.

14.The only exception that has been carved out by the Apex Court is when the cancellation of the policy happens after the accident on account of dishonour of cheque and in such cases, the third party risk will be covered by the insurance company and it will be recovered from the owner. Useful reference can be made to the judgment of the Apex Court in **United India Insurance Company Ltd., v. Laxmamma and Others** reported in **2012 4 MLJ 429**. Admittedly, in this case, the accident had taken place much later after the policy was cancelled by the insurance company.

15.In the light of the above discussion, this Court holds that the Tribunal went wrong in fixing the liability on the insurance company and applying the pay and recovery



method. The insurance company cannot be made liable to pay the compensation. The compensation that has been awarded by the Tribunal can be recovered by the claimant only as against the owner of the offending vehicle.

16. In the result, both these Civil Miscellaneous Appeals stand allowed. It is made clear that it will be left open to the claimants to recover the compensation amount from the owner of the offending vehicle. If any amount has been deposited by the Insurance Company, the same will be permitted to be withdrawn along with accrued interest, if any. Nos costs. Consequently, connected miscellaneous petitions are closed.

13.06.2024

Index : Yes
Speaking Order
Neutral citation : Yes
kp

To

Motor Accidents Claims Tribunal
(III Additional District Judge)
Villupuram @ Kallakurichi.



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N. ANAND VENKATESH., J
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COMMON Judgment in
CMA Nos.1169 & 1170 of 2023

13.06.2024