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C.M.A.No.1695 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.1695 of 2013

and

M.C.O.P.No. 903 of 2008

The Branch Manager,
Oriental Insurance Company Limited,
Pondy.

... Appellant

Vs.

1. Lalitha

2. Raji

3. Karthikeyan

4. The Branch Manager,
United India Insurance Co.Ltd.,
Cuddalore.

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.03.2012 passed in M.C.O.P.No. 903 of 2008 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Tindivnam.

For Appellant : Mr. R.Sivakumar



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JUDGMENT

Challenge is made to the Judgment and decree dated 06.03.2012 passed in M.C.O.P.No. 903 of 2008 on the file of the Motor Accident Claims Tribunal, Tindivanam/Principal Subordinate Judge, Tindivanam by the insurance company.

2. The claim petition was filed under Section 166(1) of the Motor Vehicles Act, claiming compensation of Rs. 3,50,000/- for the injuries sustained by the first respondent.

3. The Tribunal after evaluating the evidence has passed an award for a sum of Rs. 1,51,000/- with the interest at a rate of 7.5% per annum from the date of filing of petition payable by the second respondent on behalf of the first respondent at the first instance with a liberty to recover from the first respondent at a later point of time.

4. The learned Counsel, Mr.R.Sivakumar appearing for the appellant would vehemently contend that there was no valid insurance policy on the date of accident in respect of first respondent's vehicle. Therefore, the insurance company is not liable to compensate the petitioner. He would further contend that only the owner is liable to pay



compensation. Therefore, the order to pay by the insurance company and to recover at the later point of time from the first respondent is not correct.

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5. To substantiate his arguments, the learned counsel for the appellant referred the following judgments of this Court :-

(i) in the case of *IFFCO-TOKIO General Insurance Co.Ltd., Vs Shahanas* reported in **2021 (2) TN MAC 28 (DB)** was referred to in order to contend that the cheque issued by the owner of the lorry for the insurance premium amount was dishonored by her banker. Therefore, the insurance policy was cancelled by the insurance company. On the date of alleged accident, there was no insured/insurer relation between the owner of the lorry and the insurance company. Thus, there was no contract of insurance in subsistence between the insurance company and the owner of the lorry. Therefore the insurance company is not liable to pay compensation amount. This Court has held that as on the date of accident when there was no insured / insurer relationship, the question of giving direction to pay the compensation amount and to recover the same from the owner does not arise.



(ii) The judgment rendered in ***HDFC ERGO General Insurance***

Company Limited Vs. Rani and others, 2022 (1) TN MAC 644 was referred to in order to contend that when there is no policy existed on the date of accident, insurer is not liable to pay the compensation and only the owner of the offending vehicle is liable to pay the compensation and the Tribunal erred in directing the insurer to pay and recover.

6. Despite the receipt of summons, the respondents neither appeared nor represented through their counsel.

7. When similar issue came up before the Hon'ble Supreme Court in ***New India Assurance Co. Ltd. Vs. Tara Devi, 2016(2) TN MAC 520 (SC)***, wherein the Apex Court has set aside the order passed by the Tribunal and held that the insurance company is not liable to pay the compensation. The relevant portion of the said decision has been culled out as follows:

“6. *Learned Counsel appearing for the Appellant/Insurance Company submits that on the date of the alleged incident, the Vehicle in question did not have the valid*



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Insurance Policy. To buttress his argument, the learned Counsel brings to our notice the date of the Policy lapsed, the date of intimation of dishonour of the Cheque and the Cancellation Letter written to the insured/Owner. But this aspect of the matter has not been taken note of either by the Tribunal or the High Court while passing the impugned Judgment(s) and Order(s).

7. We have carefully perused the documents furnished by learned Counsel for the Appellant-Insurance Company. From these documents, it is clear that the alleged accident took place on 09.05.2001 and on the said date the vehicle in question did not have the valid Insurance Policy. In that view of the matter we are of the opinion that, the Tribunal as well as the High Court are not justified in granting Compensation to the Respondents/Claimants.

8. In view of the above, we allow this Appeal and set aside the Orders passed by the Tribunal and confirmed by the High Court. The Appellant-Insurance Company is not liable to pay any compensation as far as the claim towards the alleged



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accident is concerned. The compensation amount deposited, if any, shall be refunded to the Appellant-Insurance Company forthwith. No costs.”

8. It is the evidence of PW1 that on 20.04.2008 when the insured was traveling as a pillion in her husband's two wheeler bearing registration No. PY-01/Z-4118 along Tindivanam–Pondicherry Road proceeding towards Pondicherry, an Ambassador car bearing Registration No. TN07-A-6184 came in rash and negligent manner and hit on the motor cycle, is not in dispute.

9. It appears that, on the date of accident, the insurance policy was not renewed by the first respondent namely the owner of the car. Admittedly, on the date of accident, there was no policy alive. When the policy was not in force, ultimately the relationship between the insurer and insured is absent and there was no contract of insurance in force on the date of accident. Based on the aforesaid discussions, it has to be concluded that insurance company, therefore, is not liable to pay the compensation and the finding of the Tribunal is not legally sustainable.



10. In the result, the civil miscellaneous appeal stands allowed.

The judgment and decree passed in M.C.O.P.No. 903 of 2008 on the file of the Motor Accident Claims Tribunal, Tindivanam stands set aside and the insurance company is permitted to withdraw the amount, if it is deposited in the Trial Court. There is no order as to costs.

24.01.2024

nsI

Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To

1. The Motor Accidents Claims Tribunal
Tindivanam.
2. The Principal Subordinate Judge, Tindivanam
2. The Section Officer,
VR Section, High Court, Madras.



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