IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-11-2024

CORAM

THE HONOURABLE MR JUSTICE M.DHANDAPANI

CMA No. 997 of 2020

1. RATHINASAMY
2. RANI ...Appellant(s)

Vs

1. S.Arulmurugan
2.The New India Assurance Company Ltd, No.5, Raja Mill Road, Pollachi - 642 001. Respondent(s)

PRAYER

This Civil Miscellaneous Appeal has been filed u/s.173 of Motor Vehicles Act against the Judgment and decree dated 06.02.2020 in MCOP.No.24/2012 on the file of the Motor Accident Claims Tribunal (III Additional District Court, Thiruppur) at Dharapuram.

For Appellant(s): R.Nalliyappan

For Respondent(s): Notice Dispensed with (R1)
Mr.K.Thirunavukkarasu for R2

JUDGMENT

This Civil Miscellaneous petition has been filed against the Judgment and decree dated 06.02.2020 in MCOP.No.24/2012 on the file of the Motor Accident Claims Tribunal (III Additional District Court, Thiruppur) at Dharapuram.

2. It is the case of the appellants / claimants that on 19.05.2014 at about 12:30 p.m., when the deceased was seated under the Neem tree, at that time the first respondent who is the driver-cum-owner of a car bearing Regn.No.38 BH 2135 drove the said vehicle in a rash and negligent manner and dashed against the deceased, due to which the deceased sustained grievous injuries all over his body and succumbed to death on 30.05.2014. Claiming compensation in a sum of Rs.20,00,000/- under various heads, the claimants who are the parents of the deceased have filed the claim petition.

3. Before the Tribunal, the claimants / appellants examined P.W.1 and P.W.2 and marked Exs.P1 to Ex.P.9. On the side of the respondents, they

examined R.W.1 and marked Exs.R1 to R8. After adjudication, the Tribunal awarded a sum of Rs.6,46,000/- payable by the second respondent / insurance company as compensation in favour of the claimants. Challenging the same, the present appeal has been filed by the appellants / claimants seeking enhancement of compensation.

4. Heard the learned counsel appearing appellants / claimants and the learned counsel appearing on behalf of the second respondent / insurance company and perused the materials placed on record.

5. The main plank of contention of the learned counsel appearing for the appellants / claimants is that the accident had happened on 19.05.2014. The cheque towards premium of insurance policy was issued as early as on 17.05.2014 which is two days prior to the date of accident i.e., on 19.05.2014, which cheque on presentment was dishonoured on 22.05.2014 and was duly intimated to the insurer and the owner only on 22.05.2014 which is four days after the date of accident. Subsequently, the policy was cancelled on

23.05.2014. Though the cheque was issued as early as on 17.05.2014, however, the second respondent had belatedly presented the same for collection and the insurer should be diligent in communicating to the insured about the dishonour of the cheque, equally, it should also be pointed out that while issuing the cheque, the insured should be diligent enough to know the nuances of cheque bounce, more especially in cases of this nature, particularly, when the insured is a person, well read and knowledgeable.

6. However, it is the contention of the second respondent / insurer of the car that the validity of the policy through which the subject vehicle was covered was from 18.05.2014 to 17.05.2015 for which a cheque was given, which cheque, on presentment, was returned by the bankers leading to the cancellation of the policy. It is the further case of the second respondent that the accident had happened on 19.05.2014 during which point of time, there was no subsisting contract of insurance between the second respondent and the owner of the vehicle.

7. On a perusal of the impugned award passed by the Tribunal, it reveals that the accident had happened due to the rash and negligent driving of the first respondent. The issue arises in the present case is that whether the liability fastened by the Tribunal on the part of the first respondent on the ground of cancellation of policy is correct or not ?

8. Before proceeding to analyse the individual facts of the case with reference to the validity of the policy, the issue relating to the ratio laid down in matters relating to orders of "pay and recovery" fell for consideration before the Apex Court in the case of ***United India Insurance Co. Ltd. – Vs – Laxmamma & Ors. (2012 (1) TN MAC 481 (SC).***

9. However, the decision of the *the Apex Court in* ***Laxmamma's case (supra)****,* addresses the issue on hand, wherein the Supreme Court, in identical circumstances, held as under :-

> "*13. This decision, which is a three-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 the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party

* * * * * *

15. In Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151, the Court was concerned with the question whether the insurer is liable to honour the contract of insurance where the insured gave a cheque to the insurer towards the premium amount but the cheque was dishonoured by the drawee bank due to insufficiency of funds in the account of the drawer. In the case of Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151, the above question arose from the following facts: the owner of a Maruti car entered into an insurance contract with National Insurance Company Limited on December 21, 1993; on the same day the owner gave a cheque of Rs. 4,492/- towards the first installment of the premium; the insurance company issued a cover note as contemplated in Section 149 of the M.V. Act; the car met with an accident on December 31, 1993 in which the owner died and the car was completely damaged; on January 10, 1994 the bank on which the cheque was drawn by the insured sent an intimation to the insurance company that the cheque was dishonoured as there were no funds in the account of the drawer and on January 20, 1994 the business concern of the owner was informed that the cheque having been dishonoured by the bank, the insurance policy is cancelled with immediate effect and the company is not at risk. The widow and children of the owner filed a claim for the loss of the vehicle with the insurance company. When the claim was repudiated, they moved the State Consumer Protection Commission (for *short, 'Commission'). The Commission rejected the claim of the claimants and held that insurer was justified in repudiating the contract as soon as cheque got bounced. The claimants moved the Jammu and Kashmir High Court. The High Court reversed the order of the Commission and held that the insurance company chose to cancel the insurance policy from the date of issuance of communication and not from the date the cheque was issued which got bounced. The matter reached this Court from the above judgment of the High Court. The Court referred to Section 64-VB of the Insurance Act, Sections 25, 51, 52, 54 and 65 of the Indian Contract Act and the decisions of this Court in Inderjit Kaur MANU/SC/0842/1998 : (1998) 1 SCC 371 and Rula MANU/SC/0161/2000 : (2000) 3 SCC 195 and held (at pages 156 and 157) as under:*

> *17. In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.*
>
> *18. Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation.*

> *19. Under Section 25 of the Contract Act an agreement made without consideration is void. Section 65 of the Contract Act says that when a contract becomes void any person who has received any advantage under such contract is bound to restore it to the person from whom he received it. So, even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured, the insurer is entitled to get the money back.*
>
> *20. However, if the insured makes up the premium even after the cheque was dishonoured but before the date of accident it would be a different case as payment of consideration can be treated as paid in the order in which the nature of transaction required it. As such an event did not happen in this case, the Insurance Company is legally justified in refusing to pay the amount claimed by the Respondents.*

20. Having regard to the above legal position, insofar as facts of the present case are concerned, the owner of the bus obtained policy of insurance from the insurer for the period April 16, 2004 to April 15, 2005 for which premium was paid through cheque on April 14, 2004. The accident occurred on May 11, 2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated May 13, 2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on May 21, 2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy award of compensation passed in favour of the claimants.

21. In view of the above, the judgment of the High Court impugned in the appeal does not call for any interference. Civil appeal is dismissed. However, the insurer shall be at liberty to *prosecute its remedy to recover the amount paid to the claimants from the insured. No order as to costs."*

10. From the aforesaid decision of the Apex Court, it is implicitly evident that where the accident occurred during the survival of the policy, even upon dishonour of the cheque and the communication of the dishonour being after the happening of the accident, the insurer is liable to satisfy the award of compensation, but was well within its rights to work out its remedy to recover the amount.

11. This court in C.M.A.No.2781 of 2017 dated 20.11.2024 had spoken about the nuances of cheque bounce, more especially in cases of this nature and the relevant portion of the said case is extracted hereunder:

> 34. Further one other fact which should also not be lost sight of is that in the grounds the appellant has raised a ground that the finding of the Tribunal with regard to the education and intellectual knowledge of the appellant which also has a bearing on the issuance of the cheque, when the funds are insufficient, according to the appellant, should not have a bearing and be a decisive factor in

considering the legal issue. However, the said ground raised is wholly unreasonable for the simple reason that when the Courts have been consistently holding that the insurer should be diligent in communicating to the insured about the dishonour of the cheque, equally, it should also be pointed out that while issuing the cheque, the insured should be diligent enough to know the nuances of cheque bounce, more especially in cases of this nature, particularly, when the insured is a person, well read and knowledgeable. When in normal scenario, a cheque bounce would entail action u/s 138 of the Negotiable Instruments Act, however, under the Motor Vehicles Act, the indemnification is fastened on the insurer to safeguard the victim and it cannot be stretched to the extent of safeguarding the insured as well, which would be against logic and sane thinking and such finding, if rendered, would have disastrous consequences, which would not have the support of law.

35. As stated above, the provisions u/s 147 (5) and 149 (1) are benevolent provisions only insofar as the victim is concerned and it could not be stretched to grant any relaxation to the insured. Therefore, to the limited extent of paying the compensation immediately to the victim, the insurer would be liable and, thereafter, realising the same

from the insured in the manner known to law would be well within the domain of the insurer.

36. The decision relied on by the appellant in *Chinraj's case (supra)*, more particularly, the operative portion in Para-35, wherein S. No.iv, it has been held that 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, even the said order clearly reveals in S. No.,iv, that it is incumbent on the insurance company to pay the compensation and, thereafter, proceed to recover it in accordance with law. However, the reliance placed on the decision in *Pushpan case* with regard to the ineligibility of the insurance company to seek for pay and recover is wholly erroneous as the decision of the Apex Court in *Laxmamma case* would clinch the issue in favour of the insurance company, as the indemnification of the insurer is only with regard to the victim and not with regard to the insured.

37. Further, as stated above, in *Pushpan case*, the Division Bench had held that it is open to the insurance company to recover the amount from the insured in accordance with law. Further, in the said decision, the Division Bench had also held that it is purely within the

> domain of the Tribunal to order pay and recover in the facts and circumstances of the case. Such being the position, no fetters could be placed on the insurance company from realising the amount from the insured, who had also equally not acted diligently and, therefore, shifting the blame on the insurer alone would be nothing but perpetrating injustice.

12. However, without considering the law laid down by the Hon'ble Apex Courts, the Tribunal has fastened the entire liability as against the first respondent / owner of the car which is per se unsustainable. Hence, this Court fixes entire liability on the part of the second respondent / insurance company relying the decisions supra. The insurance company is **directed to pay the amount of claim to the appellants / claimants and recover the same from the owner of the vehicle / first respondent.**

13. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2014 and at the time of accident, the deceased was aged about 31 years and he was working as Driver, however, the

Tribunal has fixed the notional monthly income at Rs.6,000/-, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.9,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the income per month is quantified at Rs.12,600/- (9,000 + 3,600). Since the deceased died as a bachelor, 50% has to be deducted towards personal expenses. After deducting 50% towards personal expenses, the monthly income of the deceased would be at Rs.6,300/- (Rs.12,600 – 50% of Rs.12,600) and as per the Judgment of the Hon'ble Apex Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), the right multiplier to be adopted is '16' and hence, the loss of income would be at Rs.12,09,600/- (Rs.6,300 x 12 x 18).

14. A sum of Rs.30,000/- has been granted under the head loss of love

and affection which is on the lower side and the same is enhanced to a sum of Rs.80,000/-. A sum of Rs.20,000/- has been granted under the head "Transport expenses" which is not sustainable and the same is rejected. A sum of Rs.20,000/- has been granted under the head "funeral expenses" which is on the higher side and the same is reduced to a sum of Rs.15,000/-. No amount has been awarded under the head "loss of estate" and a sum of Rs.15,000/- is granted under the said head.

15. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	***Amount awarded by the Tribunal (Rs.)***	***Modified Award Amount (Rs.)***
Loss of dependency	**5,76,000/-**	**12,09,600/- (enhanced)**
Loss of estate	**-**	**15,000/-**
Funeral expenses	**20,000/-**	**15,000/-**
Transport expenses	20,000/-	-
Loss of love and affection for the petitioners	**30,000/-**	**80,000/-**

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Total	6,46,000/-	**13,19,600/-**

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part and the judgment and decree dated 06.02.2020 made in M.C.O.P.No.24 of 2015 passed by the Motor Accident Claims Tribunal, III Additional District Court, Tiruppur, Dharapuram, is modified by enhancing the compensation amount from Rs.6,46,000/- to **Rs.13,19,600/- .** The 2nd respondent Insurance is directed to deposit the said amount to the credit of M.C.O.P.No.24 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. The

compensation awarded by this Court shall be apportioned among the appellants equally. The appellants are not entitled for any interest for the delay period if any. No costs. The second respondent / insurer of the car shall recover the award amount from the owner of the car / first respondent in a manner known to law. No costs.

25-11-2024

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

1. Motor Accident Claims Tribunal (III Additional District Court, Thiruppur) at Dharapuram.

2. The Section Officer,
V.R. Section, High Court, Madras.

M.DHANDAPANI J.

CMA No. 997 of 2020

25-11-2024