IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1626 of 2018
and C.M.P.No.12909 of 2018

The TATA AIG General Insurance Company Limited,
Jeya Enclosive Building, Nilgiris Residency,
Opposite, Avinasi Road, Uppilipalayam,
Coimbatore Town, Kovai. ... Appellant

Vs.

1.Rajan (Died)

2.C.Ajeethkumar

3.Jothimani

4.Senthilkumar ... Respondents

*(*R3 and R4 were brought on record as LRs of the deceased first respondent vide order dated 21.06.2023 made in C.M.P.Nos.12263, 12265 and 12266 of 2023 in C.M.A.No.1626 of 2018*)*

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.04.2018 made in M.C.O.P.No.4 of 2015 on the file of the Motor Accidents Claims Tribunal (III Additional District and Sessions Court), Gobichettipalayam.

For Appellant	:	Mr.K.Vinod
For Respondents	:	Mr.S.P.Yuaraj for R3 and R4 R1-Died **R2-No appearance**

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the liability fastened against the appellant/Insurance Company vide impugned award dated 16.04.2018 passed in M.C.O.P.No.4 of 2015 by the Motor Accidents Claims Tribunal (III Additional District and Sessions Court), Gobichettipalayam.

2. On 23.08.2015 at about 09.00 p.m., when the first respondent/claimant was traveling as pillion rider in a motorcycle bearing Reg.No.TN 36 AB 6142 from Sathyamangalam to Athani Main Road, (i.e.,) west to east direction, the second respondent drove Innova Car bearing Reg.No.TN 25 K 3435 came from opposite direction in a rash and negligent manner and dashed against the first respondent's motorcycle, due to which, the first respondent sustained grievous injuries and thereafter, the first respondent filed a claim petition before the Tribunal seeking compensation and the Tribunal has awarded a sum of Rs.3,27,650/- and directed the appellant/Insurance Company to pay the compensation and recover the same from the second respondent, since the policy produced by the first respondent/claimant pertaining to the second respondent's vehicle was a fake policy which was proved by the appellant/Insurance Company before the Tribunal. Challenging the same, this Civil Miscellaneous Appeal has been filed.

3. The learned counsel appearing for the appellant/Insurance Company submits that the policy was issued in respect of the second respondent's vehicle bearing Reg.No.TN 25 K 3435 for the period from 28.02.2014 to 27.02.2015 and therefore, on the date of accident, there was no insurance cover for the vehicle which was proved by the appellant before the Tribunal by marking Ex.R1/Insurance Policy and Ex.R2/receipt issued for premium amount and to prove the genuineness of the policy produced by the first respondent/claimant, the appellant/Insurance Company gave complaint before the Police and the Police conducted investigation and found that the policy produced by the first respondent is a fake policy and it was also demonstrated before the Tribunal that the policy produced by the first respondent/claimant which was marked as Ex.P15 was a fake one. Even then, the Tribunal fastened the liability against the appellant/Insurance Company and directed the appellant to recover the amount from the owner of the vehicle, which requires interference at the hands of this court.

4. The learned counsel appearing for the respondents 3 and 4 submits that the Police conducted the investigation and secured the policy from the owner of the vehicle and it was genuinely produced by the first respondent and thereby, the Tribunal fastened the liability against the appellant/Insurance Company and if at all the policy is fake, it will not absolve the appellant from paying the compensation as the benevolency of the Motor Vehicles Act has to be extended to the injured by the appellant and, thereafter, proceed against the owner of the vehicle, which aspect has been rightly appreciated by the court below while passing the impugned order and, therefore, no interference is warranted with the same.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent.

6. This appeal has been filed mainly on the ground that Ex.P15 produced by the claimant is not a genuine one and it is a fake policy.

7. In order to prove the same, the official of the appellant/Insurance Company was examined as R.W.1 and Ex.R1/Insurance Policy and Ex.R2/receipt for the premium amount were marked.

8. This Court compared Ex.R1 and Ex.R2 with Ex.P15. In Ex.R1, it has been stated that the insurance policy for the vehicle belonging to the second respondent was issued for the period from 28.02.2014 to 27.02.2015 and Ex.R2/receipt for the premium amount for the said policy was issued by the appellant, whereas, in Ex.P15, it has been stated that the policy was issued for the period from 28.02.2015 to 27.02.2016, however, there is a vast difference in the various columns shown in the policy, which differs in lot of aspects, which is even decipherable to the naked eye. There is difference in the date mentioned with regard to the validity period of the policy and the font also differs. Hence, this Court has no hesitation to hold that the policy produced by the first respondent/claimant, with regard to the vehicle belonging to the 2nd respondent is not a genuine policy and,

therefore, the liability fastened against the appellant/Insurance Company cannot be sustained.

9. Though it is the case of the 1st respondent that the benevolent provisions in the Motor Vehicles Act has to be interpreted in favour of the injured, however, it is to be pointed out that when the insurer is not in any way concerned with the issuance of a policy, which is clearly not genuine, the benevolent provisions of the Act cannot act in detriment to the insurer and no direction to pay the compensation and recover the same from the owner of the vehicle can be passed. The Tribunal has failed to note the elementary principles which are involved while interpreting the Act and the award passed cannot stand the test of judicial scrutiny and, therefore it is liable to be set aside.

10. Accordingly, the award dated 16.04.2018 passed by the Tribunal in M.C.O.P.No.4 of 2015 is set aside and this Civil Miscellaneous Appeal is allowed. The respondents 3 & 4 are at liberty to recover the

amount from the owner of the vehicle in the manner known to law. The appellant/Insurance Company is permitted to withdraw the amount, if any, deposited by them before the Tribunal. There shall be no order as to costs. Connected miscellaneous petition is closed.

15.11.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb

To

1.The Motor Accidents Claims Tribunal,
(III Additional District and Sessions Court), Gobichettipalayam.

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

M.DHANDAPANI, J.

ssb

C.M.A.No.1626 of 2018

15.11.2024