IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.1508 of 2022
and
Civil Miscellaneous Petition No.11190 of 2022

The New India Assurance Co. Ltd.,
Kallakurichi ... Appellant

Vs.

1. Rajakumari
2. Santhi
3. Sangeetha
4. Palanisamy
5. Jayavel
6. D.Murugesan ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Award and Decree dated 22.12.2021 passed in M.C.O.P.No.461 of 2017 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Kallakurichi.

For Appellant	:	Mr.M.Krishnamoorthy
For Respondents	:	Mr.Ramanan, C.A For Mr.N.Manokaran

JUDGMENT

This Civil Miscellaneous Appeal filed by the Insurance Company challenging the liability fixed on them for paying compensation as per the Award dated 22.12.2021 in M.C.O.P.No.461 of 2017 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Kallakurichi, on the ground that the cheque, issued for renewal of Insurance Policy was dishonored and the same was also duly intimated to the owner of the vehicle.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. One Thangarasu was died in the Motor Vehicle Accident taken place on 29.07.2017 at about 7.30 p.m., while he was travelling as a pillion rider in a two-wheeler on the Chennai to Salem National Highways near Ammayagaram Bus stop.

4. The Sixth respondent is the owner of the offending vehicle and the appellant herein is the insurer of the vehicle. The insurer of the offending vehicle has contested the claim on the ground that for the purpose of renewal of insurance policy of the offending vehicle, the cheque was issued on

30.06.2017 and it was presented for encashment, however, the cheque was dishonored for the reason "insufficient funds" on 06.07.2017. In the meantime, Insurance Policy was also renewed from 03.07.2017 to 02.07.2018. The accident had taken place on 29.07.2017 i.e., after dishonored of cheque. The intimation regarding dishonor of cheque was already given to the owner of the vehicle and subsequently, cancellation of policy was also intimated to both owner of vehicle as well as the Regional Transport Authority. Since the policy was cancelled prior to the accident, the Insurance Company is not liable to pay the compensation.

5. The learned counsel for the Insurance Company by relying on the Judgment of the Apex Court in ***the United India Insurance Company Limited vs. Lakshmamma (2012 (1) TNMAC 481) (***Paragraph No.19) contended that since the insurance policy was already cancelled, and the same was duly intimated to the owner of the vehicle. Hence, the Insurance Company is not liable to indemnify the owner of the vehicle. He further submitted that the Tribunal has not properly appreciated this fact. On the side of the Insurance Company, they also marked the intimation letter sent to the owner of the vehicle as well as the Regional Transport Authority

intimating the cancellation of policy owing to the dishonored cheque. The postal receipts of the letter sending intimation of cancellation policy was also marked before the Tribunal as Ex.R4 and the same was also not been properly considered by the Tribunal. He further submitted that since they had proved the case that the policy was cancelled even prior to the accident, the order of Tribunal is not sustainable and prays to dismiss the same.

6. Per Contra, the learned counsel for the claimants submitted that there is no proper intimation sent to the owner of the vehicle and Ex.R4 is the postal receipt for intimation containing different pin code number. In the absence of any acknowledgment, the Tribunal has rightly held that the cancellation of policy was not properly intimated to the owner of the vehicle thereby, the Tribunal has rightly fixed the liability on the Insurance Company and prays to confirm the same.

7. The only question arises for consideration of this Court is whether the cancellation of Insurance Policy was properly intimated to the owner of the vehicle prior to the accident or not?

8. According to the Insurance Company, the cheque was dishonored on 06.07.2017. They have also marked the cheque dishonored intimation Memo as Ex.R3, which is dated 06.07.2017. Further, the Insurance Company relied on Ex.R4-Intimation Letter forwarded to the owner of the vehicle along with Receipt attached to it. In this regard, the official from the Insurance Company was also examined as R.W.1. According to him, it is the usual practice that once the cheque issued for renewal of insurance policy is dishonored, they will intimate the owner and collect the premium from the owner of the vehicle. He further submitted that immediately, after the cheque was dishonored, intimation was sent to the owner of the vehicle on 11.07.2017.

9. On a careful perusal of the letter marked as Ex.R4 shows that the Insurance Company has sent intimation that the cheque was dishonored and subsequently, they have cancelled the Insurance Policy and demanded the owner of the vehicle to surrender the above policy for cancellation immediately. However, the main crux of the issue in this case is that whether this letter was served on the owner of the vehicle or not. In the receipt attached with the letter, the name of owner and the place of this Receipt is

mentioned, however, the postal Pin Code number is stated as 607 001 instead of Pin Code of the owner i.e., 641 001. This point has been considered by the Tribunal and it has taken the view that this Receipt depicts the real story i.e., the letter was not properly served on the owner of the vehicle.

10. I have also gone through the letter as well as the receipt.

11. As observed by the Tribunal, the receipt shows that the Pin Code of the postal address is 607 001. Burden to prove the service of cancellation of policy is on the Insurance Company, and this case, they wholly relied on Ex.R4-Postal Receipt which is found to be defective. The postal receips carried the pin code which is not proper postal address of the owner of the vehicle. Except this evidence, the Insurance Company is not able to produce any document to substantiate that this notice was served to the owner of the vehicle properly. Admittedly, the Insurance Company is not able to produce any acknowledgment and there is no reason given by them for non-production of acknowledgment.

12. The Judgment relied on by the Apex Court reads that once the policy of insurance issued by the authorized insurer to cover the vehicle and cheque paid towards premium is dishonored before the accident of vehicle occurs, such Insurance Company shall cancel the policy of insurance and properly intimate the same to the owner. Whereas, in this case, as stated above, the Insurance Company is not able to probabilise their case that intimation regarding cancellation of insurance policy was properly served on the owner of vehicle.

13. The Tribunal has further gone to the extent of identifying the Pin Code which was mentioned in the Receipt and found that this Pin Code mentioned in the receipt related to some other District and the Pin Code is not related to the District, in which, the owner of vehicle is residing. In the circumstances of this case, I am of the view that the Insurance Company has not properly established their case that before the accident, the policy was validly cancelled. Since the Insurance Company is not able to prove the above fact, I am of the view that since the claim herein is made by the dependents of deceased, who are third party, the Insurance Company has to satisfy the claim initially and later recover the same from the owner of the

vehicle.

14. Accordingly, the award passed by the Tribunal is modified to the extent that the Insurance Company is entitled to recover the compensation paid to the claimants from the owner of the vehicle. In other aspects, the award of the Tribunal shall stand confirmed.

15. In the result, this Civil Miscellaneous Appeal is allowed and the Award and Decree dated 22.12.2021 in M.C.O.P.No.461 of 2017 passed by the Motor Accident Claims Tribunal, III Additional District Judge, Kallakurichi is hereby modified. The appellant-Insurance Company is directed to deposit the award amount as awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.461 of 2017 on the file of the Motor Accident Claims Tribunal, III Additional District Judge, Kallakurichi and thereafter, the Insurance Company is entitled to recover the same from the owner of the vehicle by filing Execution Petition. On such deposit, the claimants are permitted to withdraw the award amount as awarded by the Tribunal along

with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount as awarded by the Tribunal by directly giving credit to the Savings Bank Account of the claimants. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

21.11.2024

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Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The III Additional District Judge,
   Motor Accident Claims Tribunal,
   Kallakurichi.

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

K. RAJASEKAR, J.

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C.M.A.No.1508 of 2022

21.11.2024