IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal Nos.1705 and 1706 of 2020
and C.M.P.Nos.12542 and 12544 of 2020

M/s.National Insurance Company Limited,
No.30, Jawaharlal Nehru Road,
Pondicherry. ... Appellant in both appeals

Vs.

1.Chinnadurai ...R1 in C.M.A.No.1705 of 2020

2.Manikandan ...R1 in C.M.A.No.1706 of 2020

3.Sravan Kumar Gaddam ...R2 in both appeals

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.01.2020 made in M.C.O.P.Nos.23 and 24 of 2016 on the file of Motor Accident Claims Tribunal, III Additional District Court, Cuddalore at Viruddhachalam.

In both appeals

For Appellant : Mr.J.Michael Visuvasam

For R1 : Mr.S.Udayakumar

For R2 : No appearance

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C O M M O N J U D G M E N T

The appellant/National Insurance Company Limited, has filed these Civil Miscellaneous Appeals challenging the liability fixed on them vide common award dated 03.01.2020 passed in M.C.O.P.Nos.23 and 24 of 2016.

2. For the sake of brevity, the appellant is referred to as the appellant Insurance Company and the first respondent in both the appeals are referred to as the claimants and the second respondent, who is the owner of the offending vehicle, is referred to as second respondent.

3. The facts which are required for disposal of these appeals are that on 28.09.2015, the claimants were traveling in a motorcycle from Ukkiravari Village. When they reached near Government Higher Secondary School, Adari, Salem to Virudhachalam Main Road, the second respondent's car came in a rash and negligent manner and dashed against the motorcycle, as a result of which, the claimants sustained injuries and thereby, they filed separate claim petitions in

M.C.O.P.Nos.23 and 24 of 2016 before the Tribunal and the Tribunal has partly allowed the claim petitions and awarded compensation in favour of the claimants. Challenging the same, these Civil Miscellaneous Appeals have been filed.

4. The learned counsel appearing for the appellant Insurance Company submits that the second respondent is the owner of the car which met with the accident on 28.09.2015 and insured with the appellant Insurance Company. At the time of issuance of policy, the second respondent issued a Cheque on 27.03.2015 for the premium amount and the total cheque amount was Rs.3,49,724/-. The policy period was from 30.03.2015 to 29.03.2016 and the Cheque issued by the second respondent was returned for insufficient funds on 31.03.2015 and thereby, the policy was cancelled and it was duly intimated to RTO Office as well as the second respondent vide letters dated 07.04.2015 an 28.05.2015 which were marked as Ex.R2 and Ex.R3. The accident has occurred on 28.09.2015, which is after six months of cancellation of policy, however, the Tribunal fastened the entire liability against the appellant Insurance Company.

5. The learned counsel appearing for the claimants submits that the accident has occurred on 28.09.2015 and during the relevant point of time, the policy was in-force. Though the appellant Insurance Company claims that the Policy was cancelled which was duly intimated to the second respondent as well as to the RTO office and Ex.R2, which is a registered post addressed to the second respondent and Ex.R3/letter regarding cancellation of policy sent to the Regional Transport Officer, Nijamabad, Andhra State, were marked before the Tribunal to prove that the policy was cancelled, no acknowledgment card was produced by the appellant with regard to the intimation regarding cancellation of policy sent to the owner of the vehicle as well as to the RTO. In the absence of production of acknowledgment card, the Tribunal has fastened the liability on the appellant Insurance Company.

6. Heard the learned counsel appearing for the appellant Insurance Company and the learned counsel appearing for the claimants.

7. The appellant Insurance Company has filed this Civil Miscellaneous Appeal mainly on the ground that on the date of accident (i.e.,) 28.09.2015, the policy was not in-force and the cheque issued by the second respondent for the policy period from 30.03.2015 to 29.03.2016 was dishonored for insufficient funds on 31.03.2015 and thereby, the policy was cancelled and the same was intimated to the second respondent and Regional Transport Officer, Nijamabad, Andhra Pradesh vide letters dated 07.04.2015 and 28.05.2015 which were marked as Ex.R2 and Ex.R3. However, no acknowledgment card was produced before the Tribunal with regard to the cancellation of the policy intimated to the second respondent/owner of the vehicle as well as the Regional Transport Office, Nijamabad, Andhra State. A similar issue was considered by this Court in the case of ***Royal Sundaram Alliance Insurance Company Limited vs. Parvin @ Ramija reported in 2024 (2) TN MAC 652*** and the relevant paragraphs are extracted hereunder:

> *" 23. Following the steps in Deddappa case, the Apex Court in Laxmamma case had occasion to consider a similar issue and making a threadbare discussion by taking into account Deddappa, Inderjit Kaur case and **New India***

Assurance Co. Ltd. – Vs – Rula & Ors. (2000 (3) SCC 195)*, which has also been considered in Deddappa case, the Supreme Court postulated the legal position in the following manner :-*

> "*18. We find it hard to accept the submission of the learned Counsel for the insurer that the three-Judge Bench decision in Inderjit Kaur MANU/SC/0842/1998 : (1998) 1 SCC 371 has been diluted by the subsequent decisions in Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151 and Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595. Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151 and Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595 turned on the facts obtaining therein. In the case of Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151, the claim was by the legal heirs of the insured for the damage to the insured vehicle. In this peculiar fact situation, the Court held that when the cheque for premium returned dishonoured, the insurer was not obligated to perform its part of the promise. Insofar as Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595 is concerned, that was a case where the accident of the vehicle occurred after the insurance policy had already been cancelled by the insurance company.*
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> *19. In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy*

award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."

(Emphasis Supplied)

24. From the above ratio laid down, it clearly transpires that where the cheque gets dishonoured and before the accident of the vehicle occurs, the insurance company cancels the policy of insurance and sends intimation to the owner and the Regional Transport Officer, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof. Therefore, once the cancellation of the policy is made and intimation is sent to the insured, the liability of the insurance company ceases."

8. In the case on hand, the cheque, as aforesaid, though was alleged to be dishonoured on 31.03.2015 and it was intimated to the second respondent and the Regional Transport Officer, Nijamabad, Andhra Pradesh, no acknowledgment card was produced before the Tribunal by the appellant Insurance Company. In the absence of acknowledgment card, the Tribunal has rightly fastened the liability against the appellant Insurance Company which cannot be interfered with by this Court. However, the Tribunal has ordered for pay and recovery and the same is hereby confirmed.

9. Accordingly, these Civil Miscellaneous Appeals are dismissed. There shall be no order as to costs. Connected miscellaneous petitions are closed.

12.12.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
ssb

To

The Motor Accident Claims Tribunal,
III Additional District Court, Viruddhachalam.

M.DHANDAPANI, J

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Civil Miscellaneous Appeal Nos.1705 and 1706 of 2020

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