IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.2053 of 2021
and
C.M.P.No.11063 of 2021

The Divisional Manager
Cholamandalam Ms General
Insurance Company Limited
1st Floor, Meena Agencies Upstairs
South Main Street,
Thanjavur – 613 009. ...Appellants

Vs.

1. K.Malathi
2. Minor Lakshmi Priya
3. Minor Manju
4. Minor Nagesh @ Rakesh
5. Vijaya
   (Minors 2 to 4 are represented by Mother/Guardian/N.F.
   1st Respondent herein)
6. S.Vimalkumar ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.08.2017 in M.C.O.P.No.2070 of 2012 on the file of the Motor Accident Claims Tribunal (1st Additional District Judge) at Cuddalore.

For Appellants : M/s.R.Sree Vidhya

For Respondents : Mr.J.Rajmohan for R1 to R5
No appearance for R6

JUDGMENT

Challenging the judgment and decree dated 02.08.2017 passed in M.C.O.P.No.2070 of 2012 on the file of the Motor Accident Claims Tribunal, (1st Additional District Judge) at Cuddalore.

2. It is the case of the claimants that, on 12.07.2012 at about 2:30 hours, when the deceased was travelling as a load man in a TATA ACE van bearing Regn.No.TN 50 J 4392 belonging to the 6th respondent, insured with the appellant / insurance company driven by its driver in a rash and negligent manner and hit against a tree, due to which, the said vehicle capsized and the deceased sustained grievous injuries and was admitted in the hospital where he was succumbed to the injuries. Thereby, the respondent 1 to 5 / claimants, who are the dependents of the deceased filed a claim petition in MCOP.No.2070 of 2012 claiming a compensation of Rs.15,00,000/-.

3. Before the Tribunal, the claimants / respondents 1 to 5 examined

two witnesses viz. P.W.1 and P.W.2 and marked Exhibits P.1 to P.8 and the appellant / insurer of the van have examined R.W.1 and R.W.2 and marked Exs.R1 to R3. After trial, the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the van and awarded Rs.6,77,500/- towards compensation for the death of the deceased. Challenging the liability fixed on the part of the appellant / insurance company, the present appeal has been filed.

4. Learned counsel for the appellant / insurer of the van submitted that the claimants have not marked any copy of the policy issued by the insurance company. They have filed only a cover note, which is also a forged one. However, cover note Ex.P.7 is issued only for a temporary period which has to be supported by subsequent policy. In the present case, except the cover note no other policy was marked before the Tribunal. In the absence of any policy, merely based on the cover note, the claim cannot be sustained and the insurer cannot be fastened with liability to indemnify the owner of the vehicle.

5. Per contra, the learned counsel appearing on behalf of the respondents 1 to 5 / claimants submits that upon perusing the oral an documentary evidence the Tribunal has awarded the aforesaid compensation which does not require any interference.

6. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the parties and the parties have not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same.

8. There is no quarrel with the fact that the original policy has not been marked and only the cover note, which is issued before the issuance of the policy is marked. This Court in the case of ***Gowramma & Ors. - Vs - The Branch Manager, Reliance Insurance Co. Ltd. & Ors. (W.P. No.4449/2019 & 1928/2020 - Dated 22.12.2023)***, discussing the validity of the cover note placing reliance on the ratio laid down by the Apex

Court on the cover note, held as under :-

> *17. The question of validity of cover note fell for consideration before the Apex Court in Abhaysing case (supra)and the Apex Court, relating the issue to Section 145 of the Motor Vehicles Act, held as under :-*
>
> *"13. The Motor Vehicles Act, 1988 (for short, "the Act") was enacted to consolidate and amend the law relating to motor vehicles. Chapter XI of the Act provides for insurance of motor vehicles against third party risks.*
>
> *Section 145 of the Act is the definition section; Clause (b) whereof defines 'certificate of insurance' to mean a certificate issued by an authorized insurer in pursuance of Sub-section (3) of Section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.*
>
> *Clause (d) of Section 145 defines 'policy of insurance' to include 'certificate of insurance'.*
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> * * * * * * *
>
> *15. One of the grounds which are available to the insurance company to deny its statutory liability as envisaged under Sub-section (2) of Section 149 of the Act is that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particulars.*
>
> *16. Indisputably, the first respondent is a third party in relation to the contract of insurance which had been entered into by and between the appellant and the owner of the vehicle in question. We have noticed hereinbefore that a document was produced before the Tribunal. Even according to the appellant, although it was only a Motor Input Advice cum Receipt, it contained the Cover Note*

No. 279106. We, therefore, have to suppose that a Cover Note had, in fact, been issued. If a Cover Note had been issued which in terms of Clause (b) of Sub-Section 1 of Section 145 of the Act would come within the purview of definition of certificate of insurance; it also would come within the purview of the definition of a insurance policy. If a Cover Note is issued, it remains valid till it is cancelled. Indisputably, the insurance policy was cancelled only after the accident took place. A finding of fact, therefore, has been arrived at that prior to the deposit of the premium of insurance in cash by the owner of the vehicle, the cover note was not cancelled."

18. From the ratio laid down in Abhaysing case, it is evident that "Cover Note" would fall within the purview of definition of Certificate of Insurance and it would also come within the purview of the definition of insurance policy, so long as the insurance policy is a continuance of the cover note and the cover note is mentioned in the policy of insurance. Therefore, there can be no ambiguity in the proposition that so long as the cover note is issued and also finds place in the policy of insurance, the said cover note is a valid certificate of insurance, which would indemnify the insurer in compensating the claimants.

9. From the above, it crystallises that the cover note should be followed up with the issuance of the policy, which alone would clothe the cover note with validity. However, in the present case, the policy document is not placed before the Tribunal; rather the cover note alone is placed to show the certificate of insurance. However, it is the admitted proposition of law that the policy document should show the existence of

a cover note at the point of time when the accident took place, which alone would indemnify the owner and in the absence of the policy document detailing the details of the cover note, the cover note, standing alone, cannot be the document to be relied upon to direct the insurer to indemnify the owner.

10. In the present case, except for the cover note, the original policy document has not been placed before the Tribunal and in the absence of the policy document, the cover note cannot be the basis to direct the insurer to pay compensation to the claimants. The Tribunal has failed to advert to this ratio and had directed payment of compensation to the claimants, which is perverse and the same cannot be sustained.

11. Accordingly, the Civil Miscellaneous Appeal is allowed and the judgment and decree dated 02.08.2017 made in M.C.O.P.No.2070 of 2012 passed by the Motor Accident Claims Tribunal (1st Additional District Judge) at Cuddalore, is set aside. If any amount deposited by the appellant/insurance company, the appellant/insurance company is permitted to withdraw the same by filing appropriate application before

the Tribunal. The first respondent / claimant is at liberty to recover the award amount from the owner of the Van in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

28.11.2024

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

To:

1. Motor Accident Claims Tribunal (1st Additional District Judge) at Cuddalore.

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

M.DHANDAPANI, J.

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