



C.M.A.(MD)No.896 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **03.09.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.896 of 2010
and M.P(MD)No.1 of 2010

The Divisional Manager,
The New India Assurance Co. Ltd.,
252, Kamarajar Salai,
Madurai.

...Appellant/Respondent No.2

Vs.

1.C.Rajarathinam
2.S.M.Nagarajan

... 1st Respondent/Petitioner

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act against the award made in W.C.No.192 of 2006 on the file of the Workmen Compensation Commissioner and Deputy Commissioner of Labour, Madurai.

For Appellant	: Mr.N.Dilip Kumar
For R1	: Mr.M.S.Parthiban
	for Mr.R.Devaraj
R2	: Dismissed for default

J U D G M E N T

The appellant challenges the finding of the Commissioner holding the appellant liable to pay compensation to the respondent herein.

2. The 1st respondent filed a claim petition stating that while he was working as a driver under the 2nd respondent herein, he met with an



C.M.A.(MD)No.896 of 2010

accident and sustained grievous injuries; that the accident took place during the course of employment and hence, the 2nd respondent and the appellant, being the insurer, are liable to pay compensation.

3. The 2nd respondent remained ex parte before the Tribuna.

4. The appellant filed a counter stating that the insurance policy stands only in the name of one P.Mariappan and transfer of the vehicle in the name of the 2nd respondent herein was not intimated to the appellant and that the appellant is not liable to pay compensation because there is no privity of contract between the appellant and the 2nd respondent herein.

5. The claimant examined himself as P.W.1 and the doctor as P.W.2 besides marking Ex.P.1 to Ex.P.10. The appellant examined R.W.1 and marked Ex.R.1 to Ex.R.3.

6. The Commissioner held that though the vehicle originally was purchased in the name of one Mariappan, he had transferred the vehicle in favour of the 2nd respondent herein, which is evidenced by Ex.P.4



C.M.A.(MD)No.896 of 2010

endorsement in the R.C. book; and that by virtue of Section 157 of the Motor Vehicles Act, the policy of insurance is deemed to have been transferred in favour of the subsequent transferee, namely, the 2nd respondent herein.

7. The learned counsel for the appellant submitted that there is no privity of contract between the 2nd respondent herein and the appellant inasmuch as the policy stood in the name of the erstwhile owner namely, P.Mariappan and therefore, the appellant would not be liable to pay compensation. In support of his contention, he relied upon a judgment of this Court in **United India Insurance Vs. M.Priyasamy and another** reported in **2008 (2) TN MAC 502**.

8. The learned counsel for the 1st respondent per contra submitted that though the insurance policy stood in the name of erstwhile owner P.Mariappan, the 2nd respondent's name was endorsed in the registration certificate of the vehicle as the transferee of the vehicle on the date of accident; that therefore, the judgment relied upon by the learned counsel for the appellant would not be applicable to the facts of the present case and in any case, the factual finding of the Commissioner cannot be



C.M.A.(MD)No.896 of 2010

disturbed in the absence of any substantial question of law involved in the instant appeal.

9. The instant appeal was admitted in the following substantial question of law:

"Whether the Commissioner is justified in fastening the liability on the appellant without considering the plea of the appellant that there is no privity of contract between the appellant and the employer of the claimant?"

10. The vehicle in question which was involved in the instant appeal originally belonged to one P.Mariappan, who was the insured as per the policy Ex.P.4. There is no dispute with regard to the said fact. The accident took place on 04.07.2006. The vehicle in question was transferred to the 2nd respondent herein on 18.05.2006 as per Ex.P.3, the copy of the registration certificate of the vehicle. Therefore, the finding of the Commissioner that the vehicle was transferred in the name of the 2nd respondent is based on evidence on record and there is no infirmity in the same. However, the appellant was not informed about the transfer.



C.M.A.(MD)No.896 of 2010

11. In the judgment United India Insurance Vs. M.Priyasamy and another reported in **2008 (2) TN MAC 502**, a learned single Judge this Court held that where the transfer had been effected after the date of the accident, it cannot be said that there was privity of contract with the transferee and the insurance company at the time of the accident. However, in the instant case, the transfer in the registration certificate was effected before the accident and merely because the name was not transferred in the insurance policy, it cannot be said that there was no privity of contract between the appellant and the 2nd respondent.

12. The Hon'ble Supreme Court, in the case of Mallamma (Dead) by Lrs. Vs. National Insurance Company Limited and Others, reported in **(2014) 14 SCC 137**, held that under similar circumstances, that since the ownership of the vehicle had been transferred and was covered under a valid insurance policy, it cannot be said that there is no privity of contract between the insurer and the insured, in view of the deeming provision contained in Section 157(1) of the Motor Vehicles Act, 1988.

13. Therefore, in the facts of the case, this Court is of the view that



C.M.A.(MD)No.896 of 2010

the Commissioner was right in awarding compensation by holding that the 2nd respondent had a valid insurance policy and the appellant was liable to pay compensation. The substantial question of law is answered accordingly and therefore, the award of the Commissioner is confirmed.

14. In the result, this appeal is dismissed. No costs. The first respondent is permitted to withdraw the compensation amount by filing a suitable application. Consequently, connected miscellaneous petition is closed.

03.09.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To

1.The Workmen Compensation Commissioner and Deputy Commissioner of Labour, Madurai.

2. The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.896 of 2010

SUNDER MOHAN, J.

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Judgment made in
C.M.A(MD)No.896 of 2010

03.09.2024