BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.12.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.440 of 2019
and
C.M.P.(MD)No.5267 of 2019

M/s.United India Insurance Co. Ltd.,
Represented by its Divisional Manager,
Kumbakonam. ... Appellant

vs.

1.Neelavathi (died),
2.Mathiyazhagan,
3.Tamizharasi,
4.Savithiri,
5.Rani,
6.Senthilkumar. ...
Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order, dated 05.02.2019 passed in M.C.O.P.No.276 of 2015 on the file of the Motor Accidents Claims Tribunal/Additional District Court (Fast Track Court), Kumbakonam.

For appellant : Mr.B.Rajesh Saravanan

For Respondents
for R1 : died
for R2 to R5: Mr.M.Karunanithi
for R6 : Mr.B.Anandan

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JUDGMENT

This Civil Miscellaneous Appeal is filed by Insurance Company/2nd respondent against the award dated 05.02.2019 made in M.C.O.P.No.276 of 2015 on the file of the Motor Accidents Claims Tribunal/Additional District Court (Fast Track Court), Kumbakonam.

2. The case of the claimants as set out in the claim petition is narrated hereunder in brief:

(a) On 20.06.2008, at about 9.45 a.m., while the deceased Sundaram was proceeding by walk along the outer ring road to the east of SM weighing bridge, a Maruti car bearing Registration No.TSG 5155 came in a rash and negligent manner from Thanjavur-Kumbakonam road and hit on a cow as well as the deceased and further, hit on an electric pole and thereafter, the low lying area on the road. Due to the said impact, the said Sundaram sustained severe injuries and succumbed to the said injuries. Due to the rash and negligent driving of the driver-cum-owner of the car, the accident happened and he is liable to pay compensation to the dependents of the deceased/Sundaram.

(b) On behalf of the first respondent, it was contended by filing a counter to the effect that the first respondent did not drive the vehicle in a rash and negligent manner. When the cow got frightened and came to the center portion of the road, the deceased/Sundaram, without minding about the car, proceeded on the road and he came in front of the car in order to catch the cow. Due to which, the deceased hit on the car, sustained injuries. Beacause of his negligence only the accident occurred.

(c) Whereas, on the second respondent side, it was contended that on the date of accident, there was no insurance coverage for the car, bearing Registration No.TSG 5155.

(d) At trial, on the claimants side, two witnesses were examined and seven documents were marked. On the second respondent side, three witnesses were examined and three documents were marked.

(e) Upon consideration, the Tribunal has fastened the liability on the owner of the car and directed the second respondent to pay the compensation of Rs.7,99,204/- to the claimants.

3. The learned counsel for the appellant/Insurance Company would vehemently argue that on the date of accident, namely, on 20.06.2008, there was no insurance coverage for the first respondent/car. He would further contend that as per Ex.R2/policy copy, the policy period is from 23.06.2008 to 22.06.2009.

4. In order to buttress his arguments, the following judgments were referred to:

1. ***Balbir Kaur and others vs. New India Insurance Company Limited and others reported in 2009 (13) SCC 370*;**
2. ***Oriental Insurance Company Limited vs. Porselvi and another reported in 2009 (15) SCC 116;***
3. ***The Branch Manager, National Insurance Company Limited vs. Vijayalakshmi reported in 2017 (1) TN MAC 168 (DB)***.

5. Per contra, the learned counsel for the respondent Nos.2 to

5/claimants would vehemently contend that the Insurance Company cannot disown its liability, having received the premium amount on 19.06.2008. As per Section 64-VB of the Insurance Act, 1938, if the Insurance Company received the premium, it should not come with a plea that as per the terms of the insurance policy, they are not liable to pay the compensation.

6. In order to substantiate his arguments, reliance has been placed on the following judgments:

a. ***Oriental Insurance Company Limited vs. Dharam Chand and others (Civil Appeal No.5204 of 2003 (SC), dated 27.08.2010);***

b. ***Oriental Insurance Company Limited vs. Venkatraman and others (C.M.A.Nos.542 to 544 of 2008, dated 18.07.2012).***

7. This Civil Miscellaneous Appeal is preferred mainly on the issue of liability.

8. In ***Balbir Kaur***'s case (cited supra), the policy was issued from the future date and the accident occurred before effective date of policy. However, the Tribunal awarded the compensation, holding that the insurer was liable. This finding was reversed by the High Court, stating that the

insurer was not liable for payment of compensation, since the policy did not come into force and directed the appellants to refund the amount withdrawn by them. The Hon'ble Apex Court held that as the owner of the vehicle accepted the order of the High Court by not questioning it, he is liable to pay the award amount and directed the insurer to recover the same from the owner and driver of the vehicle.

9. It has further been held by the Hon'ble Apex Court that, as per Section 64-VB of the Insurance Act, 1938, a policy, which is issued from a future date, must be issued with the consent of the holder of the policy and the Insurance Company cannot issue the policy unilaterally from a future date without the consent of the holder of the policy.

10. For the sake of convenience, Section 64-VB of the Insurance Act, 1938 is extracted hereunder:

> *"No risk to be assumed unless premium is received in advance.—(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is*

guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation. — Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the
insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a

premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.

(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of

receipt of premium by the insurer."

11. The law is well settled that the policy of the insurance commences the risk coverage based on the terms of the policy of the insurance. As regards this case is concerned, on a careful perusal of the policy, it is a package policy. This was issued on 19.06.2008 (Ex.P1), which is not in dispute and the policy itself bears the said date. The period of insurance is from 23.06.2008 to 22.06.2009 and the amount of Rs. 1,481/- was collected towards premium inclusive of service tax, for which a receipt has been issued on 19.06.2008 in receipt No.

091102/81/08/0000023. At the instance of the insurer, though the premium was collected on 19.06.2008, the policy coverage commences only from 23.06.2008, after 5 days from the date of collection of premium. No issue if the insurance policy could be issued for a future date with the consent of the holder of the policy.

12. The Hon'ble Apex Court has also held in ***Balbir Kaur***'s case (cited supra) that the Insurance Company cannot issue a policy unilaterally from a future date without the consent of the holder of the policy. There is no explanation on the part of the Insurance Company. On what basis, the policy was issued from a future date? However, candid argument of the learned counsel for the appellant in this regard is that only the date of commencement of the policy matters in this case and the period of the insurance commenced on 23.06.2008 and further, the accident having occurred on 20.06.2008, therefore, the Insurance Company is not liable to pay compensation.

13. This Court is of the view that the premium of Rs.1,481/- was collected on 19.06.2008 itself, but the period of coverage commences only on 23.06.2008 after five days. No explanation whatsoever was given by the

Insurance Company in this regard. As held by the Hon'ble Apex Court in ***Balbir Kaur***'s case (cited supra), when a policy is issued at a future date, consent from the owner should have been obtained by the insurance company. In this case, no such consent is said to have been obtained by the insurance company from the owner. Therefore, as per law, as mandated by the Hon'ble Apex Court, as per Section 64-VB of the Insurance Act, 1938, it should not lie from the mouth of the insurance company that as per the terms of the insurance policy, on the date of the accident (20.06.2008), there was no policy of insurance and they are not liable to pay compensation. As held by the Hon'ble Apex Court in ***Balbir Kaur***'s case (cited supra), once the premium was received on 19.06.2008 and having not obtained any consent from the owner of the vehicle, the insurance policy is construed to have commenced from 19.06.2008 itself. As the accident occurred on 20.06.2008, based on the aforesaid legal position, the insurance company has the obligation to honour the policy and the Insurance Company is liable to pay compensation.

14. This Court is of the view that the award of the Tribunal with regard to the liability does not suffer from any perversity or infirmity. Hence, the award of the Tribunal stands confirmed.

15. Based on the afrestated discussions and observations, this Civil Miscellaneous Appeal stands dismissed and

1. The appellant is directed to deposit the award amount of **Rs.7,99,204/-** (Rupees Seven Lakh Ninety Nine Thousand Two Hundred and Four only) along with 7.5% interest per annum from the date of the claim petition till the date of realisation and costs, less the amount already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this order.
2. On such deposit, the respondents 2 to 5/claimants are permitted to withdraw their share as per the apportionment fixed by the Tribunal, with interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.
3. There is no order as to costs. Consequently, connected miscellaneous petition stands closed.

31.12.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd
To

1.The Motor Accidents Claims Tribunal/Additional District Court (Fast Track Court), Kumbakonam.

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

R.KALAIMATHI,J

apd

C.M.A.(MD) No.440 of 2019

31.12.2024