BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2024

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THE HON'BLE MR.JUSTICE G.ILANGOVAN

C.M.A.(MD).Nos.639 & 640 of 2022
and C.M.P.(MD).Nos.5492 & 5496 of 2022

C.M.A.(MD).No.639 of 2022

M/s.National Insurance Co.Ltd. Through its
Divisional Manager,
No.6, North Masi Street,
Madurai ... Appellant/Respondent No.2.

Vs.

1.Balasubramanian ... 1st Respondent/Petitioner

2.Yesathurai ... 2nd Respondent/1st Respondent

3.Muthuramalingam ... 3rd Respondent/3rd Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the Judgement and Decree dated 28.03.2022 passed in M.C.O.P.No.1 of 2018 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Muthukulathur.

For Appellant : Mrs.P.Malini

For Respondents : Mr.P.Senthil for R1
Mr.T.Veerakumar for R3
No Appearance for R2

C.M.A.(MD).No.640 of 2022

M/s.National Insurance Co.Ltd. Through its
Divisional Manager,
No.6, North Masi Street,
Madurai ... Appellant/Respondent No.2.

Vs.

1.Muneeswaran ... 1st Respondent/Petitioner

2.Yesathurai ... 2nd Respondent/1st Respondent

3.Muthuramalingam ... 3rd Respondent/3rd Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the Judgement and Decree dated 28.03.2022 passed in M.C.O.P.No.2 of 2018 on the file of the Motor Accident Claims Tribunal / Subordinate Court, Muthukulathur.

For Appellant : Mrs.P.Malini

For Respondents : Mr.P.Senthil for R1
Mr.T.Veerakumar for R3
No Appearance for R2

COMMON JUDGMENT

These appeals have been directed against the Common Judgement and Decree, dated 28.03.2022, passed in M.C.O.P.Nos.1 & 2 of 2018, on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Muthukulathur.

2.The facts in brief:

On 23.10.2013 at about 08.00 a.m., Balasubramaniam, who is the petitioner in M.C.O.P.1 of 2018 and Muneeswaran, who is the petitioner in M.C.O.P.No.2 of 2018, were riding two wheeler bearing Registration No.TN 65 Z 1267, which belongs to one Rajapandi. Muneeswaran was Pillion Rider. Near the road they stopped the vehicle and were talking to some persons. At that time, a four wheeler bearing Registration No.69 K 7494 was driven by its driver in rash and negligent manner and dashed against them. As a result of which both sustained injuries, both were taken to hospital and took treatment. Claiming compensation amount of Rs.5,00,000/- Balasubramaniam filed M.C.O.P.No.1 of 2018 and claiming Rs.3,00,000/- Muneeswaran filed M.C.O.P.No.2 of 2018 for the injuries sustained by them.

3.Both the petitions were taken up together. On the side of the petitioners, three witnesses were examined and 17 documents were marked. On the side of the second respondent, one witness was examined and 4 documents were marked. On the side of the third respondent, one witness was examined and 11 documents were marked. Apart from that, Ex.C1, Ex.C2, Ex.X1 to Ex.X5 were also marked.

4.The claim was resisted by the respondents stating that rider of the two wheeler bearing Registration No.65 Z 1267 was not having proper driving licence; He suddenly crossed the Road towards the south and invited the accident; The vehicle bearing Registration No.69 K 7494 did not insure with the second respondent company, who is the appellant herein. So the second respondent is not responsible for the compensation, if so ordered.

5.The third respondent filed a counter stating that he drove the vehicle in a proper manner. But as mentioned above, the rider of the two wheeler suddenly crossed the road and invited the accident.

6.Regarding the negligence aspect, the Tribunal decided that it was on the part of the driver of the four wheeler bearing Registration No.TN 69 K 7494.

7.Regarding the liability, which is now under dispute on the basis of Ex.R11, which was marked through the third respondent namely, Muthu Ramalingam, it was believed and also proved that the Insurance Company is liable to pay the compensation and recover the same from the insured. Regarding the compensation for Balasubramaniam, it was fixed at Rs.4,34,298/-. In respect of Muneeswaran, it was fixed at Rs. 1,19,719/-. Against which, these appeals have been preferred by the National Insurance Company, which was the second respondent before the Tribunal.

8.These appeals have been preferred only on the ground of liability. The second respondent namely, Yesathurai, who is the first respondent before the Tribunal and owner of the vehicle, remained exparte before the Tribunal in both the matters. Only Muthuramalingam, who is the driver of the offending vehicle appeared. Since only liability is under issue, we can decide that the third respondent was responsible for the occurrence. That was not seriously disputed before this Court either in this matter or by filing proper application. So that portion of the order requires no interference. Regarding the compensation also, the Tribunal arrived the figure on the basis of the injuries sustained by the claimants. So that portion of the order also requires no interference.

9.The issue is only with regard to the coverage. Now we will straight-away go to the evidence on record on this aspect. Ex.R11 is the payment receipt issued by one Asians Motors. It was marked through the driver of the offending vehicle. As mentioned above, the owner of the offending vehicle remained exparte throughout. For what reason he has not chosen to appear is not clear on record.

10.The document reads that a sum of Rs.10,500/- was received towards National Insurance renewal premium for the vehicle bearing Registration No.69 K 7494, which is dated 21.10.2013. For Asians Motors, the Insurance Advisor has signed. The question which arises for consideration is whether this document is sufficient enough to caste liability upon the Insurance Company. The payment would have been made only by the owner of the vehicle namely, Yesathurai. As mentioned above, he is not speaking about the payment of premium amount. Not even the person, who received the premium amount, was examined on their side to prove the same.

11.Even if we accept that it was received by the Asians Motors, whether they are the Authorized agent of the appellant Insurance Company to receive the premium is not established, even it is rather denied by the appellant company. Moreover, no cover note was also issued on the date of receipt of the renewal premium. When the Author of the document is not examined to prove the genuineness, the Tribunal has committed an error in accepting the same stating that on behalf of the appellant company, it failed to prove that the payment receipt was not issued. No negative proof can be expected. The person who produce the document and wants the Court to believe its reliability must establish the same. The self serving evidence of RW2 namely, Muthuramalingam is not sufficient.

12.The learned counsel for the appellant would rely upon the Judgment of the Co-ordinate Bench of this Court in the case of ***United India Insurance Co.Ltd, 1170, Muthiah Complex, Mettur Road, Erode – 11 Vs. Kalamani and others*** reported in ***2022 (2) TN MAC 322*** for the purpose of argument that the coverage will commence only from the date and time mentioned in the policy and not otherwise. As mentioned above not even a cover note was issued by the alleged Authorized agent. If really that amount was received by the Asians Motors, the amount would have been entered in the Accounts Book, etc. As mentioned above, none was examined on the side of the Asians Motors. The date of occurrence stated to be an 23.10.2013. But, the premium was stated to be received on 21.10.2013. The period of coverage starts from 15.50 hours on 23.10.2013. So it appears that after the occurrence, the insurance policy has been issued. The Tribunal has also recorded a finding that without making proper inspection of the vehicle, insurance also has been issued. Now, whatever it may be, the genuineness of Ex.R11 is highly doubted. Based upon this doubtful document, the Tribunal ought not to have ordered the party to pay the money and recover the same from the owner of the vehicle. By proving that no coverage was effected, when documents were before this Court, the Tribunal ought not to have re-litigate the matter to the future proceedings.

13.Even though the learned counsel for the respondent would submit that they are the third parties, their interest must be protected. But when there is no coverage, Insurance Company cannot be mulcted with any liability. Even pay and recovery order should not be passed in like manner. Contractual liability starts only from the time of insurance effect. So the contention on the part of the claimant is also rejected.

14.Accordingly, these appeals are allowed. No costs. The order passed by the Tribunal is modified to the effect that the owner of the vehicle namely the second respondent namely, Yesathurai, who is the first respondent before the Tribunal, alone is liable to pay the entire compensation awarded by the Tribunal to the claimants. The appellant company is exonerated from the liability. Consequently, connected miscellaneous petitions are closed.

12.06.2024

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

1.The Subordinate Judge, Motor Accident Claims Tribunal / Subordinate Court, Muthukulathur.

2.The Section Officer,
E.R.Section/V.R.Section,

Madurai Bench of Madras High Court, Madurai.

G.ILANGOVAN,J.

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