BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1039 of 2021
and
C.M.P.(MD) No.9813 of 2021

The Senior Manager,
United India Insurance Co. Ltd.,
Door No.7A, West Veli Street,
Madurai-625 001. ... Appellant

Vs.

1.Mahabunisha
W/o.Kaleel

2.Mohideen Abdul Khadar
S/o.Kaleel

3.Jennathu Jailani
W/o.Abdulhalip

4.Vasim Akram,
S/o.Kaleel

5.Rooban
S/o.Mariarajan

6.Kanthan
S/o.Gopal ... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the Judgment and Decree dated 25.01.2021 made in M.C.O.P.No.101 of 2018 on the file of the Motor Accident Claims Tribunal (Principal District Court), Ramanathapuram.

For Appellant	: Mr.G.Prabhu Rajadurai
For R1 to R5	: No appearance
For R6	: Mr.K.Sathish Kumar

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 25.01.2021 passed by the Motor Accident Claims Tribunal (Principal District Court), Ramanathapuram, in M.C.O.P.No.101 of 2018, holding that the appellant Insurance Company is liable to pay compensation to the first to fourth respondents/claimants.

2. The first to fourth respondents/claimants had filed a claim petition in M.C.O.P.No.101 of 2018 before the Tribunal, stating that on 08.01.2018 at about 03.00 p.m., while the deceased was riding his two-wheeler bearing Registration No.TN-65-E-2616, the fifth respondent, Rooban, who was riding a two-wheeler bearing Registration No.TN-65-

M-6576, had overtaken the two-wheeler of the deceased and, without any warning or indication, turned towards the right side, as a result of which, the deceased collided with the two-wheeler ridden by the fifth respondent Rooban and sustained grievous injuries and succumbed to the injuries.

3. The appellant Insurance Company had filed a counter stating that the fifth respondent rider of the offending vehicle had not insured the vehicle with the appellant Insurance Company, and therefore, they are not liable to pay compensation. The appellant Insurance Company had filed an additional counter stating that the cover note relied upon by the first to fourth respondents/claimants was not valid and the entry made in the RTO records is without any basis, and therefore, they are not liable to pay compensation.

4. The sixth respondent herein, who was shown as the owner in the R.C. Book, filed a counter stating that he had sold the vehicle through a broker named Sankar on 05.07.2017, and on the date of the accident, the vehicle was no longer in his possession, and therefore, he is not liable to pay the compensation.

5. Before the Tribunal, on the side of the first to fourth respondents/claimants, two witnesses were examined as P.W.1 and P.W.2 and Exs.P1 to P10 were marked. On the side of the appellant Insurance Company, three witnesses were examined, as R.W.1 to R.W.3 and Exs.R1 to R19 were marked.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the rash and negligent riding of the fifth respondent, Rooban, and that the vehicle had valid insurance with the appellant Insurance Company, and directed the appellant Insurance Company to pay compensation and recover the same from the fifth and sixth respondents.

7. The learned counsel for the appellant Insurance Company submitted that there was no valid insurance for the offending vehicle, and the Tribunal has overlooked several important documents that would conclusively show that the offending vehicle did not have a valid insurance policy. He relied on the Ex.R16 Motor Vehicle Inspector's Report, which suggested that the insurance policy was not produced.

8. The learned counsel for the appellant Insurance Company further submitted that the rider of the offending vehicle i.e., the fifth respondent herein had remained *ex parte* before the Tribunal and has not produced the insurance policy; that the first to fourth respondents/claimants have however produced a print out of entries made in the Regional Transport Office which though suggested that the vehicle was insured by the appellant Insurance Company and a cover note reference that was given by the first to fourth respondents/claimants is bogus; that the RTO officials had admitted that the documents based on which they made such an entry were not traceable and such entry was made only at the time of changing the ownership after the accident in favour of the fifth respondent Rooban.

9. The learned counsel for the appellant Insurance Company further pointed out that the Ex.R18 Insurance Policy was taken from another Insurance Company by the fifth respondent, Rooban in February 2018, though it is the case of the first to fourth respondents/claimants and the other respondents that the vehicle had valid insurance up to October 2018, which shows that the document produced by the claimants was not genuine.

10. Although notice was served to the first to fourth respondents/claimants, none has entered appearance. The fifth respondent, Rooban remained *ex parte* even before the Tribunal.

11. The learned counsel for the sixth respondent submitted that he had a valid insurance policy and handed over all the documents relating to the vehicle to the said Rooban (R5), and therefore, he could not produce the insurance policy. The learned counsel for the sixth respondent further submitted that the entry made in Ex.P10, which is a document issued by the RTO officials, would clearly show that the vehicle was insured with the appellant Insurance Company and there is no reason for the public authorities to make a wrong entry in their records. He further submitted that such an entry ought to be taken as proof of fact that the vehicle had a valid policy, and therefore the appellant Insurance Company is liable to pay compensation.

12. This Court has carefully considered the rival submissions made by the learned counsel for the appellant Insurance Company and the learned counsel for the sixth respondent.

13. The only question involved in the instant appeal is whether the owner of the offending two-wheeler had insured the vehicle with the appellant Insurance Company.

14. The first to fourth respondents/claimants had not entered appearance for the reasons best known to them. Therefore, there is no dispute with regard to the quantum of compensation awarded by the Tribunal.

15. As regards the question involved in the instant appeal, the document relied upon by the first to fourth respondents/claimants before the Tribunal is Ex.P10, which is a document issued by the Assistant Registering Authority, Ramanathapuram, who was examined as R.W.1. The said document, Ex.P10 is titled 'Vehicle Particulars'. The entry in the said Ex.P10 reads as follows:

> "COMPREHENSIVE Insurance From UNITED INDIA INSURANCE CO. LTD vide Policy certificate/covernote no 006999 is valid from 15-Oct-2017 to 14-Oct-2018"

16. R.W.1 stated in his deposition that in the records maintained by the Regional Transport Office, it has been noted that the vehicle was insured with the appellant Insurance Company from 15.10.2017 to 14.10.2018. In the endorsement that has been extracted above, the cover note number has been given as '006999'. Mr.Sudalaimani, who was working as the administrative officer for the appellant Insurance Company, was examined as R.W.3. In his deposition, he stated that he made an application under the RTI Act to the RTO *vide* Ex.R13 seeking the document, based on which the entry relating to the insurance cover note was made in the records. The response of the RTO officials was marked as Ex.R14. In the said response, the RTO officials stated that the documents relating to the policy certificate and cover note were not traceable. In such circumstances, it is not clear as to on what basis the said entries were made by the RTO officials in the record. That apart, the learned counsel for the appellant Insurance Company has drawn my attention to Ex.R19, a copy of the cover note policy issued to a policyholder, to highlight discrepancies between the digits of the policy cover note issued and the policy cover note number in the RTO records, which contains only 6 digits.

17. The appellant Insurance Company has also produced a document (Ex.R18) to show that the transferee of the vehicle, namely the fifth respondent, had obtained an insurance policy with 'IFFCO-TOKIO' General Insurance Company Ltd. from 02.02.2018 to 01.02.2019 after the vehicle was transferred to his name on 24.01.2018. Admittedly, the vehicle was ridden by the fifth respondent at the time of the accident on 08.01.2018. Therefore, this Court is of the view that it is probable that the sixth respondent sold the vehicle to the fifth respondent prior to the accident, though no transfer was effected in the RTO records. If the fifth respondent or the sixth respondent had a valid insurance policy with the appellant Insurance Company from 15.10.2017 to 14.10.2018, there is no necessity for them to take another insurance policy from a different Insurance Company from 02.02.2018 to 01.02.2019.

18. Above all, the Motor Vehicle Inspector's Report (Ex.R16) shows that at the time of inspection, the insurance certificate was not produced. Even if the fifth respondent or the sixth respondent had a valid insurance policy, there is no reason as to why the same was not produced before the Motor Vehicle Inspector.

19. As against the overwhelming evidence produced on the side of the appellant Insurance Company that the vehicle was not insured with them, the document (Ex.P10) cannot be relied upon as proof of the fact that there was a valid insurance policy. Further, the RTO officials were unable to state on what basis the entry was made in Ex.P10. Further, there was no need to issue a policy cover note for renewing the policy. The policy cover note number also appears to be doubtful.

20. Therefore, this Court is of the view that the claimants and other respondents herein have not established that the vehicle was insured with the appellant Insurance Company. Hence, the appellant Insurance Company cannot be made liable to pay the compensation. However, it is made clear that the compensation awarded by the Tribunal is liable to be paid by the fifth and sixth respondents jointly or severally.

21. This Court leaves it open for the first to fourth respondents/claimants to recover the compensation from the fifth and sixth respondents in the manner known to law.

22. With the above liberty, this Civil Miscellaneous Appeal deserves to be allowed and stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

08.08.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

JEN

Copy To:

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Ramanathapuram.

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

SUNDER MOHAN, J.

JEN

C.M.A.(MD) No.1039 of 2021
and
C.M.P.(MD) No.9813 of 2021

08.08.2024