BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.06.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.486 of 2017

M/s.Bajaj Allianz General Insurance Company Limited,
GVR Complex, NO.6.A, Second Floor,
Lawsans Road, Cantonment,
Trichy-620 001. ... Appellant/2nd Respondent

Vs.

1.R.Muthulakshmi

2.R.Bhuvaneshwari

3.Minor.Rajeswari ... Respondents/Petitioners

(Minor R3 is represented by her mother and guardian R1)

4.N.Sathish ... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.1476 of 2011, dated 23.03.2016 on the file of the Motor Accident Claims Tribunal, Principal District Court, Tiruchirappalli.

For Appellant : Mr.J.S.Murali

For R1&R2 : M/s.J.Maria Roseline

For R4 : No Appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging an order of pay and recovery passed in M.C.O.P.No.1476 of 2011 on the file of the Motor Accident Claims Tribunal / Principal District Court, Tiruchirappalli primarily on the ground of liability.

2. The claimants have contended that on 01.07.2010, the deceased was standing in the bus stop on the extreme left side of the road. At that point of time, the milk van belonging to the 1st respondent and insured with the 2nd respondent came in a rash and negligent manner and dashed against him. Due to the said impact, he had sustained head injuries and later, he passed away. The claimants have contended that the deceased was 19 years old and he was a 3rd year engineering college student on the date of accident. They have prayed for a compensation of Rs.10,00,000/-.

3. The insurance company has filed a counter contending that the cheque issued by the 1st respondent towards payment of premium was

dishonoured by the bank on 10.07.2009 and intimation was given to the insured person on 15.07.2009 through registered post. The accident has taken place on 01.07.2010. Therefore, on the date of the accident, there was no subsisting policy. Despite been informed about the cancellation of the policy, the 1st respondent has not chosen to pay the premium amount and renew the policy. Hence, they have prayed for their exoneration from the liability.

4. The tribunal after considering the oral and documentary evidence, arrived at a finding that the accident has taken place only due to the negligence on the part of the driver of the 1st respondent. As far as the subsistence of the insurance policy is concerned, the tribunal arrived at a finding that the policy was not subsisting on the date of the accident, since the cheque issued by the insured person towards the premium has been dishonoured one year prior to the date of accident. Based upon the said findigns, the tribunal had fixed the total compensation at Rs.7,70,000/- and directed the insurance company to satisfy the award and thereafter, recover the same from the 1st respondent in the claim petition. Challenging this pay and recovery order, the present appeal has been filed by the insurance company.

5. According to the learned counsel appearing for the insurance company, when there is no subsisting insurance policy on the date of the accident and the policy that was already issued stood cancelled by way of an intimation, dated 15.07.2009, the question of passing an order of pay and recovery would not arise. Hence, he prayed for exonerating the insurance company and mulct the entire liability upon the 1st respondent in the claim petition.

6. The learned counsel appearing for the claimants had contended that the insurance company has not placed on record any document to establish the fact that the dishonour of the cheque was intimated to the insured person and therefore, a 3rd party to the contract of the insurer should not be affected. She further contended that once a policy of insurance is been issued, unless it is cancelled in manner known to law, the policy would continue to the subsisting. Hence, she prayed for sustaining the award passed by the tribunal.

7. I have carefully considered the submissions made on either side and perused the material records.

8. The primary contention of the insurance company is that dishonour of the cheque issued towards premium amount has been informed to the insured person 1 year prior to the date of the accident and therefore, they are not liable to pay any compensation. A perusal of Exhibits R.1 and R.2 indicate that the insured person has issued a cheque for a sum of Rs.9,591/- on 07.07.2009 towards the premium amount. However, the same has been returned by the bank under Exhibit R.2 for want of sufficient funds. The insurance company has primarily relied upon Exhibit R.3 to R.5 to contend that the fact that the cheque was dishonoured and the policy was cancelled, has been properly informed to the insured person. A perusal of Exhibits R.3 and R.4 indicate that they are only outward registers maintained by the insurance company. However, the letters have not been marked as one of the exhibits so as to indicate that the insured person was informed about the cancellation of the policy due to dishonor of the cheques. Exhibit R.5 acknowledgment card relates to a letter addressed to the Revenue Divisional Officer. Even the covering letter addressed to the Revenue Divisional Officer has not been marked. In such circumstances, this Court is of the considered opinion that there are no records to establish the fact that the insured person was at any time informed about the dishonour of the cheque or the

cancellation of the policy.

9. The legal manager of the insurance company has been examined as Exhibit R.W.2. During his examination, he has categorically admitted that they have not produced the letter addressed to the Revenue Divisional Officer or the insured person relating to the cancellation of the insurance policy. In such circumstances, this Court is of the considered opinion that the tribunal was right in ordering pay and recovery. Hence, there are no merits in the appeal. The appellant insurance company is directed to satisfy the award and thereafter, recover the same from the 1st respondent in the claim petition by filing execution petition in the present M.C.O.P.No.1476 of 2011 without instituting any independent proceedings following the judgment delivered by the Hon'ble Supreme Court in ***2004 (13) SCC 224 (Oriental Insurance Company Limited Vs. Shri Nanjappan & Others)***.

10. With the above said observations, this Civil Miscellaneous Appeal stands disposed of. No costs.

26.06.2024

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

1.The Motor Accident Claims Tribunal /
Principal District Court,
Tiruchirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.486 of 2017

26.06.2024