



S.A. No.528 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 06.01.2025

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.528 of 2006

M/s.Shobha Cloth Centre,
Rep. by its partner M.Shoukath Ali,
At Shoba Corner,
Big Bazaar Street,
Coimbatore-641 001.

... Appellant

Vs

The Oriental Insurance Company,
Rep. by its Divisional Manager,
Divisional Office No.II,
Avinashi Road, Suguna Buildings,
Coimbatore.

... Respondent

For Appellant : Mr.Sundar Narayanan
For Respondent : Mr.N.Vijayaraghavan

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree of the learned I Additional District Judge, Coimbatore in A.S.No.137 of 2004 dated 28.06.2005 reversing the judgment and decree of the learned Principal Subordinate Judge, Coimbatore in O.S.No.239 of 2003, dated 30.04.2004.



S.A. No.528 of 2006

JUDGMENT

WEB COPY

The appellant has filed this Second Appeal against the judgment and decree of the learned I Additional District Judge, Coimbatore in A.S.No.137 of 2004 dated 28.06.2005 reversing the judgment and decree of the learned Principal Subordinate Judge, Coimbatore in O.S.No.239 of 2003, dated 30.04.2004.

2. Heard Mr.Mr.Sundar Narayanan, learned counsel for the appellant, and Mr.N.Vijayaraghavan, learned counsel appearing for the respondent, and perused the material available on record.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. Challenging the reversal findings of the first appellate court, the plaintiff has preferred this appeal.



S.A. No.528 of 2006

WEB COPY

5. Before the trial court, the plaintiff filed a suit seeking damages for his car, bearing registration number T.N.37-U-8321, which sustained heavy damage. At the time of the accident, the vehicle was insured. The accident occurred on 22-06-2000, and the plaintiff immediately informed the insurance company about the damage. However, there was a dispute regarding the person who was driving the vehicle at the time of the accident. According to the plaintiff, the vehicle was driven by his driver, Shanawas. However, the police contended that the car was driven by the plaintiff's son, Gani @ Moinudeen, who was a minor. Based on this, the insurance company argued that the plaintiff had breached the terms of the insurance policy.

6. As per the findings of CC.No.1087 of 2000, the trial court acquitted Gani @ Moinudeen, concluding that he was not the person driving the vehicle at the time of the accident. Following this, the plaintiff approached the insurance company to claim damages, but the company refused to pay. Consequently, the plaintiff filed a suit.



S.A. No.528 of 2006

WEB COPY

7. In response, the defendant raised objections through a written statement. While the defendant admitted that the insurance policy was in force from 20-04-2000 to 19-04-2001, they denied other allegations. The insurance company contended that although the accident occurred on 22.06.2000, the plaintiff submitted his claim application after a lapse of one and a half years. Additionally, the defendant argued that they were not given the opportunity to inspect and survey the damaged vehicle immediately after the accident. The explanation offered by the plaintiff for the delay was deemed untenable. Furthermore, as there was uncertainty regarding the person who drove the vehicle at the time of the accident, the insurance company questioned the credibility of the claim. They also contended that the estimate of damages provided by Coimbatore Auto Garage, dated 28.11.2001, was not prepared immediately after the accident and, therefore, was not genuine.

8. Upon considering both submissions, the learned trial judge framed the issue of whether the plaintiff was entitled to the claimed damages. Before the trial court, the plaintiff presented three witnesses (P.W.1 to 4\16



S.A. No.528 of 2006

P.W.3), and exhibits Ex.A1 to Ex.A16 were marked. On the defendant's side, D.W.1 was examined, and exhibits Ex.B1 to Ex.B5 were marked.

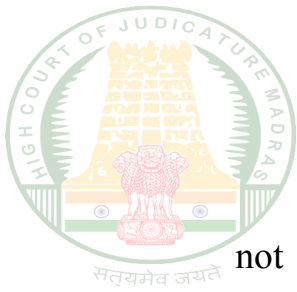
9. After evaluating both oral and documentary evidence, the learned trial judge held that at the time of the accident, the plaintiff's car was insured with the defendant. Although there was a delay in submitting the claim form, the trial court found that there was no specific condition in the policy requiring an immediate submission of the claim form. The plaintiff contended that the accident had been orally reported to the insurance company, which instructed him to provide details regarding the driver and other particulars. Following the disposal of CC.No.1087 of 2000, the person driving the vehicle was determined. Moreover, the policy did not stipulate that a delay in reporting the claim would result in its rejection. Since the insurance policy was in force at the time of the accident, the trial court decreed the suit, directing the defendants to pay damages of Rs.3,40,500/- with 12% interest.



S.A. No.528 of 2006

10. Challenging this judgment, the defendant preferred an appeal (A.S.No.134 of 2004) before the First Additional District Judge, Coimbatore. The learned first appellate judge independently analyzed the evidence, framed four issues, and ultimately held that the plaintiff submitted the claim form on 21.01.2002 only after the disposal of CC.No.1087 of 2000. The insurance company rejected the claim as highly belated.

11. Referring to the terms and conditions in Ex.B1 and Ex.B2 (the original policy), the appellate court noted the exception clause No.3, which required the insured to provide written notice to the insurance company immediately upon the occurrence of an accident if the vehicle was driven by someone other than the authorized driver. In this case, no such notice was given, preventing the company from assessing the damages to the vehicle. Additionally, the damage report was obtained by the plaintiff only after one and a half years, and the insurance company was not given an opportunity to survey the vehicle. Furthermore, there remained uncertainty regarding the person who drove the vehicle, and proper authorization was



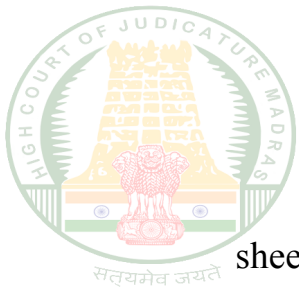
S.A. No.528 of 2006

not given by the plaintiff to the witnesses examined in the case. Since the damage estimate was prepared 15 months after the accident, the actual loss and damages sustained by the car were not supported by proper evidence. Accordingly, the appellate court allowed the appeal and set aside the findings of the trial court.

12. Challenging these reversal findings, the plaintiff has preferred this appeal, which has been admitted on the following question of law.

"Whether the Courts below have properly construed the contents of Ex.B1 and Ex.B2 relating to the policy and conditions annexed there with especially in the circumstances that the Courts below have accepted the existence of the policy covering the issue involved?"

13. The learned counsel for the appellant argues that immediately after the accident, they informed the insurance company orally. At that time, the person who had driven the vehicle was uncertain due to contradictory information. Therefore, the insurance company directed the appellant to obtain the correct details of the driver. Meanwhile, a charge



S.A. No.528 of 2006

sheet was filed, in which it was alleged that one Gani @ Moinudeen, son of the plaintiff / owner of the car, had driven the vehicle negligently, causing the accident that resulted in the death of one of the occupants. Consequently, CC No. 1087 of 2000 was filed against the plaintiff's son, Gani @ Moinudeen.

14. However, after the evidence was presented, the learned Magistrate held that there was no proof from the prosecution's side that Gani @ Moinudeen had driven the vehicle. Instead, one Shanawaz, the actual driver of the car, was found to have been driving at the time of the accident. Accordingly, the case resulted in an acquittal.

15. Thereafter, once the plaintiff was confirmed with who had driven the vehicle, he submitted the claim form. However, the claim was rejected on the grounds of delay. The plaintiff contends that no specific restriction regarding delay was imposed in the policy, and this was rightly appreciated by the learned trial judge. However, the learned first appellate judge erroneously set aside these findings without properly appreciating the



S.A. No.528 of 2006

evidence on record. Hence, the appellant prays for the appeal to be allowed.

WEB COPY

16. On the other hand, the learned counsel for the respondent/insurance company argues that the plaintiff did not immediately inform them about the accident. Instead, he approached them nearly one and a half years later, demanding damages by submitting an estimate report from a private valuer. As a result, the insurance company was not given an opportunity to inspect and assess the damages. The learned first appellate judge correctly appreciated this fact, and therefore, no interference is required. Accordingly, the respondent prays for the appeal to be dismissed.

17. In response, the learned counsel for the appellant contends that the insurance policy does not stipulate that a delay in submitting information would lead to the rejection of a claim. The appellant argues that even though the claim form was submitted belatedly, the insurance company was not entitled to reject it solely on that basis. The policy and its conditions, as evidenced by Exhibits B1 and B2, were examined.



S.A. No.528 of 2006

18. Upon reviewing Exhibit B2 (policy conditions), it is noted that

the policy states that

"(i) notice must be given in writing to the insurance company immediately upon the occurrence of any accident, loss, or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require. Every letter claim write summons and / or process or a copy thereof shall be forwarded to the Company immediately or receipt by the insured. Notice shall also be given in writing to the company immediately the insured shall have knowledge of any impending prosecution, inquest, fatal inquiry in respect of any occurrence which may given rise to claim under the policy. In case of theft or criminal act which may be subject of a claim under this policy the insured shall give immediate notice to the policy and co-operate with company in securing the conviction of the offender.

(ii) No admission offer promise payment or indemnity shall be made or given by or on behalf of the insured without the written consent of the company which shall be entitled if it so desires to take over and conduct in the name of the insured the defence or settlement of any claim or to prosecute in the mane the insured for its own benefit any claim for indemnity



WEB COPY



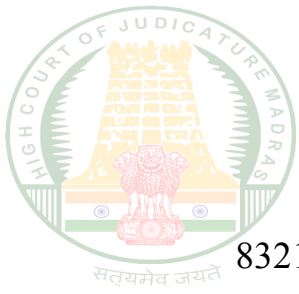
S.A. No.528 of 2006

or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the insured shall give all such information and assistance as the company may require.

(iii) The company may at its own option repair, reinstate or replace the motor car or part thereof and / pr its accessories or may pay in cash the amount of the loss or damage and the liability of the Company shall not exceed the actual value of the parts damaged or loss depreciation plus the reasonable cost of fitting and shall in no case exceed the insureds estimate of the value of the Motor Car (including accessories thereon) as specified in the schedule or the value of the Motor car. (including accessories thereon) at the time of the loss or damage which ever is less."

19. The learned counsel for the respondent contends that the plaintiff violated this condition by informing the company about the accident only after a delay of nearly one and a half years. As a result, the claim was rightfully rejected.

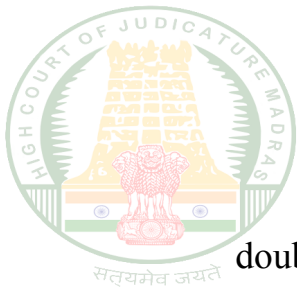
20. The facts of the case reveal that the plaintiff's car (T.N.37-U-



S.A. No.528 of 2006

8321) met with an accident on 22-06-2000 while the insurance policy was in force. The accident occurred due to the puncture of the right front tire, which caused the driver to lose control, dragging the car to the left and crashing into an electric pole. The driver escaped, but one of the three occupants died on the spot, while the other two sustained injuries.

21. The plaintiff claims that he orally informed the insurance company, which advised him to take photographs of the car and collect estimates along with other details. When the plaintiff approached the police, a complaint was lodged against the car's driver by the deceased's family. However, the investigation officer initially concluded that the deceased, Sakil, was driving the car. Later, the investigation incorrectly implicated Gani @ Moinudeen, the plaintiff's son, and filed a charge sheet in CC No. 1087 of 2000 against him. The plaintiff was advised to complete the criminal case to establish that Gani @ Moinudeen was not driving the vehicle. The case proceeded on its merits, and witnesses testified that Shanawaz was actually driving at the time of the accident. As a result, the trial court acquitted Gani @ Moinudeen, granting him the benefit of the

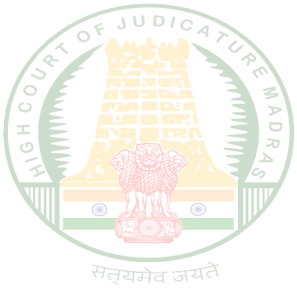


S.A. No.528 of 2006

doubt. Following the acquittal, the plaintiff immediately approached the insurance company with the claim form on 21-01-2002, along with a valuation report detailing the damages caused by the accident. However, the claim was rejected on the grounds of late submission.

22. The learned counsel for the respondent argues that had the plaintiff issued notice to the insurance company immediately after the accident, their officials could have inspected and assessed the damages. The learned first appellate judge rightfully appreciated this aspect and dismissed the claim. Hence, the respondent prays for the appeal to be dismissed as it lacks merit.

23. The learned counsel for the appellant counters that the insurance policy does not impose any condition stating that a delayed claim submission would result in forfeiture of compensation. In this case, the delay occurred because of the dispute over who was driving the vehicle at the time of the accident. The criminal case, CC No. 1087 of 2000, had to be resolved before the plaintiff could proceed with the claim.



S.A. No.528 of 2006

WEB COPY

24. The insurance company also raised doubts about the identity of the driver. Under such circumstances, the company ought to have examined Shanawaz, who was found to be the actual driver. However, no such step was taken. Meanwhile, before the Magistrate's court, Shanawaz testified as a witness for the accused. The trial court acquitted Gani @ Moinudeen due to insufficient evidence.

25. Immediately after the acquittal, the plaintiff approached the insurance company to claim damages. There was no negligence on the plaintiff's part in approaching the respondent. The delay was neither intentional nor unwarranted but was due to the pending criminal case (CC No. 1087 of 2000). Even though the claim was submitted after one and a half years, the circumstances of the case forced the plaintiff to file it only after the criminal case was concluded.

26. Additionally, at the time of the accident, the vehicle was insured, and the nature of the accident was proven. Hence, the plaintiff is entitled to



S.A. No.528 of 2006

claim damages as requested. The trial court correctly allowed the claim, but the learned first appellate judge erroneously dismissed it, which necessitates interference. Exhibits B1 and B2 (the policy and its conditions) were not properly appreciated, thus the question of law is answered.

27. Accordingly, the findings of the learned first appellate judge are set aside. The suit is decreed. The second appeal is allowed. There shall be no order as to costs.

06.01.2025

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

rri

To

1. The Additional District Judge, Coimbatore.
2. The Principal Subordinate Judge, Coimbatore.
3. The Section Officer, VR Section, High Court of Madras.

15\16



WEB COPY



S.A. No.528 of 2006

T.V.THAMILSELVI, J.

rri

S.A.No.528 of 2006

06.01.2025