IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3487 of 2024
and
C.M.P.No.29380 of 2024

The Branch Manager,
National Insurance Co. Ltd.,
Royal Towers, 185/1, Meyyanoor Road,
Opposite ARRS Multiplex Theatre,
Salem, Tamil Nadu – 636 004. ... Appellant

Vs.

1. Manjunath
2. Kannan ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 09.01.2024 and made in M.C.O.P.No.200 of 2022 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Krishnagiri.

For Appellant : Mr.S.Vadivel

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JUDGMENT

The above appeal is filed by the appellant/Insurance company against the judgment and decree dated 09.01.2024 and made in M.C.O.P.No.200 of 2022 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Krishnagiri.

2. Since no adverse order is being passed against the respondents, notice to the respondents is dispensed with.

3. It is the case of the appellant / Insurance company that, on 24.09.2020, when the first respondent / claimant namely Manjunath was driving the two wheeler bearing Regn.No.TN 70 AB 5148, at that time a lorry bearing Regn.No.TN 30 AZ 6604 which was proceeding in front of the claimant, suddenly applied brake without lighting any indicator, due to which, the claimant dashed the rear side of the lorry and sustained grievous injuries all over his body and was hospitalised. Therefore, the first respondent / claimant has filed a claim petition claiming a sum of Rs.25,00,000/- for the injuries sustained by him in the said accident.

4. Before the Tribunal, the claimant / first respondent has examined P.W.1 and marked Exhibits P.1 to Ex.P.9. On the side of the appellant / insurance company, they eamined R.W.1 and marked Exs.R1 to R6 and Court document was marked as Ex.C1. After adjudication, the Tribunal awarded a

sum of Rs.3,15,000/- as compensation to the claimant. Challenging the same, the appellant / Insurance company has preferred the present appeal.

5. The learned counsel appearing for the appellant / Insurer of lorry submitted that, though the appellant issued a policy covering from 21.09.2020 to 20.09.2021, to the owner of the lorry upon payment of the premium, however, the said premium was dishonoured on the ground of mismatch of signature on 22.09.2020 which is two days prior to the date of accident. It is the further case of the appellant that the accident had happened on 24.09.2020 during which point of time, there was no subsisting contract of insurance between the appellant and the owner of the vehicle. When there being no policy on the date of accident, the Tribunal ought not to have granted a sum of Rs.3,15,000/- in favour of the claimant which is *per se* unsustainable. Accordingly, he prayed to allow this appeal.

6. Heard the learned counsel appearing for the appellant and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. Admittedly, the

accident happened on 24.09.2020. In order to prove the said incident, the claimant has examined himself as P.W.1. who categorically deposed before the Tribunal that the accident had occurred solely due to the driver of the lorry, due to which the first respondent sustained grievous injuries. However, in order to disprove the same, no independent eye witness has been examined by the appellant / Insurance company. It is the contention of the appellant that though the cheque issued by the owner of the lorry for the payment of premium of insurance policy was dishonoured on 22.09.2020 prior to the date of accident on the ground of mismatch of signature, however, the Tribunal ordered to pay and recover the same from the owner of the lorry when there being no subsisting contract between the owner of the lorry and the appellant / insurance company.

8. The issue arises in the present appeal is whether the cancellation of policy by the appellant / insurer of the lorry was duly intimated to the owner of the lorry and Regional Transport Officer or not ?

9. This Court in ***C.M.A.Nos.4449 of 2019 & 1928 of 2020*** dated ***22.12.2023*** in the case of ***Gowramma Vs.The Branch Manager M/s.Reliance General Insurance Co. Ltd.*** held that where the accident occurred during the

survival of the policy, even upon dishonour of the cheque and the communication of the dishonour being after the happening of the accident, the insurer is liable to satisfy the award of compensation, but was well within its rights to work out its remedy to recover the amount. The relevant portion of the said judgment is extracted hereunder:

> 13. In *Laxmamma case,* the Supreme Court had considered the liability of the insurer to compensate the victim in cases where the premium was paid by way of cheque, but the cheque stood dishonoured and the policy was cancelled and in the said scenario, the Supreme Court juxtaposed the insurer into the shoes of the owner of the vehicle for the limited purpose of realising the object of Sections 147 and 149 of the Motor Vehicles Act to the limited extent of paying the compensation to the third party and, thereafter, recovering the same from the owner of the vehicle. In the said context, the Apex Court held as under :-
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> > "*17. The Court in Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595 again considered the relevant statutory provisions and decisions of this Court including the above three decisions in Inderjit Kaur MANU/SC/0842/1998 : (1998) 1 SCC 371, Rula MANU/SC/0112/2001 : (2001) 3 SCC 151 and Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151. In para 24 (at page 601) of the Report, the Court observed as under:*

24. We are not oblivious of the distinction between the statutory liability of the insurance company vis-à-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.

Then in para 26 (at page 602), the Court invoked extraordinary jurisdiction under Article 142 of the Constitution of India and directed the insurance company to pay the amount of claim to the claimants and recover the same from the owner of the vehicle.

18. We find it hard to accept the submission of the learned Counsel for the insurer that the three-Judge Bench decision in Inderjit Kaur MANU/SC/0842/1998 : (1998) 1 SCC 371 has been diluted by the subsequent decisions in Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151 and Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595. Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151 and Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595 turned on the facts obtaining therein. In the case of Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151, the claim was by the legal heirs of the insured for the damage to the insured vehicle. In this peculiar fact situation, the Court held that when the cheque for premium returned dishonoured, the insurer was not obligated to perform its *part of the promise. Insofar as Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595 is concerned, that was a case where the accident of the vehicle occurred after the insurance policy had already been cancelled by the insurance company.*

19. In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."

10. When the communication of the dishonour being after the happening of the accident, the appellant is liable to indemnify the claimant and recover the same from the owner of the lorry. Upon appreciating the oral and documentary

evidence the Tribunal had rightly awarded a sum of Rs.3,15,000/- as compensation to the claimant, which does not require any interference.

8. For the reasons aforesaid, this Appeal stands dismissed, confirming the award passed by the tribunal in M.C.O.P.No.200 of 2022 dated 09.01.2024 and the appellant / Insurance company is directed to deposit the compensation of **Rs.3,15,000/-** awarded by the tribunal to the credit of M.C.O.P.No.200 of 2022 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the Tribunal is directed to transfer the said amount to the first respondent directly to his bank account through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal. The compensation amount shall be apportioned among the claimant as per the order of the Tribunal. No costs. Connected miscellaneous petition is closed.

02.01.2025

Index : Yes / No
Netrual Citation Case : Yes / No
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To

1. Motor Accident Claims Tribunal, Special Subordinate Judge, Krishnagiri.

2.The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.

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