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C.M.A.No.2046 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2025

CORAM :

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

C.M.A.No.2046 of 2021

A.Ranganathan

... Appellant

Vs.

1. R.Zeenath
2. Iffco Tokio General Insurance Co. Ltd.
Iffco Bhavan, 4th Floor,
No.128, Habibullah Road,
T.Nagar, Chennai – 600 017.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 20.11.2019 made in MCOP.No.7337 of 2014 on the file of Motor Accident Claims Tribunal, In the V Court of Small Causes, Chennai.

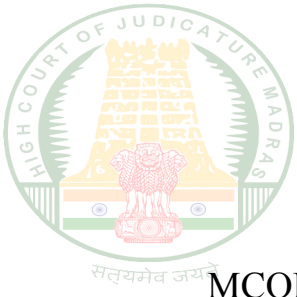
For Appellant : M/s.M.Malar

For R1 : No Appearance

For R2 : Mr.M.Jayaraj

JUDGMENT

The above appeal is filed by the appellant / claimant seeking to set aside the Judgment and Decree dated 20.11.2019 passed in



C.M.A.No.2046 of 2021

WEB COPY

MCOP.No.7337 of 2014 by the Motor Accident Claims Tribunal, In the
V Court of Small Causes, Chennai.

2. It is the case of the appellant / claimant that, on 06.11.2014 at about 8:30 hours, when the appellant was riding his two wheeler bearing Regn.No.TN 22 CT 6471, at that time a Car bearing Regn.No.TN 20 CZ 3517 driven by its driver belonging to the first respondent insured with the second respondent insurance company came in a rash and negligent manner and dashed the vehicle in which the appellant was riding, due to which, the appellant sustained grievous injuries all over his body. Therefore, the appellant / claimant has filed a claim petition claiming a sum of Rs.6,00,000/-.

3. Before the Tribunal, the appellant / claimant has examined P.W.1 and marked Exhibits P.1 to Ex.P.5. On the side of the respondents, they examined R.W.1 and marked Exhibits R1 and R2 and Court document was marked as Ex.C1. After adjudication, the Tribunal awarded a sum of Rs.2,22,000/- as compensation to the appellant to be payable by the first respondent / owner of the car after deducting 10%

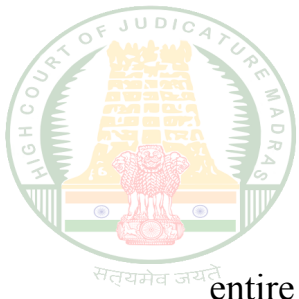


C.M.A.No.2046 of 2021

WEB COPY

contributory negligence on the part of the appellant. Challenging the same, the appellant / claimant has preferred the present appeal.

4. The learned counsel appearing for the appellant / claimant submitted that, due to the rash and negligent driving of the driver of the car, the appellant sustained grievous injuries all over his body. Admittedly, the Tribunal has fastened the entire liability as against the owner of the car by discharging the second respondent / insurer of the car on the ground that the cheque issued by the first respondent towards payment of premium of insurance policy was dishonoured by the Bank due to “insufficient funds”, which subsequently was intimated vide letter dated 18.09.2014 to owner of the car as well as the Regional Transport Office and that there was no contract between the respondents 1 and 2. Though such a finding has been rendered by the Tribunal, however, the acknowledgment card with respect to the intimation of cancellation of policy was not marked as document before the Tribunal or before this Court. In the absence of any intimation viz. acknowledgment card to prove that the cancellation of the policy was being served to the owner of the car as well as the R.T.O., the Tribunal ought not to have fastened the



C.M.A.No.2046 of 2021

WEB COPY

entire liability on the part of the first respondent/ owner of the car, as the said finding is hit by a cataena of precedents and ratio laid down on the said issue by the various Courts.

5. The learned counsel appearing on behalf of the second respondent / insurer of the car submits that as on the date of the accident, viz., 06.11.2014, there was no policy subsisting in the eye of law, as the policy, which was issued by receiving the cheque was cancelled on 22.04.2014, due to dishonour of the cheque and communication with regard to the cancellation of the policy had been given to the insured/ 1st respondent and the Regional Transport Officer. Therefore, the Tribunal fixed the entire liability on the part of the first respondent / owner of the car, which does not warrant any interference.

6. Heard the learned counsel for appellant and the learned counsel for the second respondent / insurer and perused the materials placed on record.

7. The issue arises in the present appeal is whether the cancellation



C.M.A.No.2046 of 2021

WEB COPY

of policy by the second respondent / insurer of the car was duly intimated to the owner of the car and the Regional Transport Officer or not ?

8. It is the case of the second respondent / insurer of the car that the validity of the policy through which the subject vehicle was covered was from 23.04.2014 to 22.04.2015 for which a cheque was given, which cheque, on presentment, was returned by the bankers leading to the cancellation of the policy. It is the further case of the second respondent that the accident had happened on 06.11.2014 during which point of time, there was no subsisting contract of insurance between the second respondent and the owner of the vehicle. Before proceeding to analyse the individual facts of the case with reference to the validity of the policy, the issue relating to the ratio laid down in matters relating to orders of “pay and recovery” fell for consideration before the Apex Court in the case of ***United India Insurance Co. Ltd. – Vs – Laxmamma & Ors. (2012 (1) TN MAC 481 (SC).***

9. In Laxmamma case, the Supreme Court had considered the liability of the insurer to compensate the victim in cases where the



C.M.A.No.2046 of 2021

WEB COPY

premium was paid by way of cheque, but the cheque stood dishonoured and the policy was cancelled without giving proper intimation to the owner of the vehicle or the R.T.O. 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 :-

“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



WEB COPY



C.M.A.No.2046 of 2021

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



WEB COPY



C.M.A.No.2046 of 2021

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."



C.M.A.No.2046 of 2021

WEB COPY

10. Though the second respondent claims that there was no policy subsisting in the eye of law, as the policy, which was issued by receiving the cheque was cancelled on 22.04.2014, due to dishonour of the cheque and communication with regard to the cancellation of the insurance policy had been given to the insured/ 1st respondent and the Regional Transport Officer, however, in order to substantiate prove the same, there is no proof like acknowledgment with regard to the cancellation of policy, was duly intimated to the owner of the vehicle and the R.T.O. In the absence of any acknowledgement card with regard to the intimation of cancellation of policy, it cannot be said that the insurance company has intimated the owner of the vehicle. However, without considering the law laid down by the Hon'ble Apex Court, the Tribunal has fastened the entire liability as against the first respondent / owner of the car which is per se unsustainable. Hence, this Court fixes entire liability on the part of the second respondent / insurance company relying the decision of the Laxmamma case (*supra*). The insurance company is directed to pay the amount of claim to the appellant / claimant and recover the same from the owner of the vehicle / first respondent.



C.M.A.No.2046 of 2021

WEB COPY

11. On the aspect of negligence, the Tribunal has fixed 10% contributory negligence on the part of the appellant / claimant, which does not require any interference, since the claimant was not in possession of a valid driving license. Insofar as the quantum of compensation awarded by the Tribunal is concerned, the same is just and reasonable and does not require any interference.

12. Accordingly, the Civil Miscellaneous Appeal is allowed and the judgment and decree dated 20.11.2019 made in M.C.O.P.No.7337 of 2014 passed by the Motor Accident Claims Tribunal, In the V Court of Small Causes, Chennai., is set aside. The second respondent / insurance company is directed to deposit compensation of Rs.2,22,000/- awarded by the tribunal to the credit of MCOP.No.7337 of 2014 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, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the appellant directly to his bank account through RTGS within a period of two (2) weeks thereafter. The second respondent /



C.M.A.No.2046 of 2021

WEB COPY

insurer of the car shall recover the award amount from the owner of the car bearing Regn.No.TN TN 20 CZ 3517 in a manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

20.01.2025

RAP

Index : Yes / No

Speaking order / Non-speaking order

Netrual Citation Case : Yes / No

To

1.Motor Accident Claims Tribunal, In the V Court of Small Causes,
Chennai.

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



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C.M.A.No.2046 of 2021

M.DHANDAPANI, J.

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C.M.A.No.2046 of 2021

20.01.2025