BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.11.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No. 1970 of 2013

1. N. Nallammal
2. N. Sundaram ... Appellants / Petitioners / Respondents 1 & 2

Vs.

1.The New India Assurance Co. Ltd.,
Udumalpet. ...1st respondent / 2nd respondent / Petitioner
2. G. Jayaseelan
3. T.R.Chandrasekaran ... 2&3 Respondents/ 1&3 Respondents / 3&4Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 15.04.2013 made in I.A No.442 of 2009 in M.C.O.P. No. 629 of 2007 on the file of the Motor Accidents Claims Tribunal (District Judge), Karur and allow this Civil Miscellaneous Appeal.

For Appellants : Mr.T.Selvakumaran

For Respondents : Mr.D.Sivaraman – for R1
dispensed with – for R2
No appearance – for R3

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the fair order and decretal order, dated 15.04.2013 passed in I.A No. 442 of 2009 in M.C.O.P. No.629 of 2007 by the Motor Accident Claims Tribunal (District Judge), Karur.

2. **Brief facts of the petition are as follows**:-

(a) The respondents 1 and 2/claimants herein filed the claim petition seeking compensation of a sum of Rs.4 lakhs for the death of one Nallusamy who died in a road accident that occurred on 13.10.2007, alleging that the accident occurred solely due to the rash and negligent driving of the driver of the vehicle bearing Registration No.T.N. 39-AB-4648. The third respondent is the owner of the vehicle and the fourth respondent is the previous owner in whose name insurance policy stood at the time of accident.

(b) As per the petitioner, the insurance company were specifically denied the liability by stating that on the investigator's report of the company contested the claim and the liability was to be fastened on the respondents 1 and 2, in its award dated 23.12.2008, by the Tribunal.

(c) After perusal of the copy of the judgment and decree and upon verification of records, the petitioner came to know that the said vehicle was not covered by any insurance policy on the date of accident. The first respondent in the main petition has not furnished proper particulars and third respondent also remained *ex parte*. Both first and third respondent played fraud with the Court. No liability was fixed against the third respondent. Due to oversight, believing the investigator's report, the petitioner failed to furnish particulars of insurance policy. All the above facts would go to show that there is error apparent on the face of the records. Hence, the petitioner has filed a petition seeking review of the order passed by the Tribunal on 23.12.2008.

3. The respondents 1 and 2 have filed counter by denying the allegations in the revision petition and contending that the review petition is not maintainable. They further submitted that the petitioner has not disputed the existence of insurance policy during the trial and they further stated that the petitioner had also examined the investigator Sebastian and marked the insurance policy as Ex.R2 and thereby admitting its liability.

4. Upon consideration of the materials available on record, both oral and documentary, the Tribunal allowed the review petition and set aside the award passed by the Tribunal.

5. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the appellants / claimants on the following grounds :

(i) That the Tribunal ought to have seen that the claimants never committed any fraud regarding this claim.

(ii) That the Tribunal ought to have seen that the petitioner's vehicle involved in the accident was TN 39-AP 4648 and the same was insured with the 2nd respondent. RW-1 examined by the petitioner/2nd respondent has also admitted the same, the policy was also marked as Ex.R2.

(iii) That the Tribunal ought to have seen that on 03.12.2008 M.C.O.P.No.629 of 2007 was decreed by the Tribunal, but on the basis of the review order, the Tribunal set aside the decree dated 03.12.2008, this is a erroneous order because earlier the insurance company admitted the liability and subsequently go-back by their earlier statement it is not correct.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. Now, this Court has to decide whether the order of the Tribunal is sustainable or liable to be set aside?

8.Point

The Review petition filed by the respondent insurance company which was allowed and the award passed by the Tribunal was set aside and the insurance company is absolved from its liability against which the present Civil Miscellaneous Second appeal is filed.

9. The contention of the review petitioner is that the appellant filed the claim petition seeking compensation of Rs.4 lakhs for the death of one Nallusamy who died in a road accident occurred on 13.10.2007. According to the appellant, the accident had occurred solely due to the rash and negligent driving of the driver of the vehicle bearing Registration No.TN 39-AB-4648 belonging to the third respondent. The fourth respondent is the previous owner of the said vehicle in whose name the policy stood at the time of accident.

10. The respondent/insurance company denied the allegation in the counter statement and contested the case. However, the trial Court fixed the liability on them and awarded compensation.

11. The respondents 3 and 4 though served with notice, did not appear before the Court.

12. The learned counsel for the appellant further submitted that the vehicle bearing Registration No.TN 39-AB-4648 belonging to the 4th respondent was covered with insurance policy and that the revision petitioner had not raised any objection before the Tribunal, during trial regarding the non-existence of policy. Therefore, the Tribunal passed an award, without depositing the amount, the petitioner had filed the review petition in order to drag on the proceedings. The respondent/insurance company contended that one Chandrasekaran, the 4th respondent owns two vehicles. The vehicle involved in the accident is bearing Registration No.TN 39-AB-4648 which was not covered with insurance policy. The 4th respondent also owns another vehicle bearing Registration No.TN 39-AB-4464 which was covered with insurance policy with the respondent.

13. It is not in dispute that the vehicle involved in the accident is bearing Registration No.TN 39 AB 4648. The name of the owner has been shown as G.Jayaseelan, the 1st respondent in the claim petition and one Chandrasekar was shown as third respondent. The insurance company with whom the vehicle was insured was shown as 2nd respondent.

14. However, the claimant did not produce the insurance policy along with the claim petition. The insurance company marked the insurance premium as Ex.R2 which pertains to the vehicle No.TN 39 AB 4464 which was issued in favour of Thiru.T.K.Chandrasekar, the 3rd respondent in the claim petition.

15. However, during trial the insurance company/2nd respondent has not disputed that the vehicle involved in the accident was not insured with them. During the review summon was issued under Ex.P.2 and produced the fabricated policy under Ex.P.4 in which it was apparently shows that the policy which was originally issued to the vehicle bearing Registration No.TN 39 AB 4464 has been fabricated and altered to show the registration Number as TN 39 AB 4648.

16. The Tribunal based on the judgment reported in ***2000 ACJ 1032 (United India Insurance Company Ltd., Vs. V.Rajendra Singh and Others)*** which is extracted as follows :

> *"14. It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.*
>
> *15. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."*

recalled its earlier order on the basis of the newly discovered facts amounting to fraud and accordingly, allowed the review petition and dismissed the claim petition and the insurance company is absolved from its liability by holding the original owner was responsible to pay the amount.

17. This Court also is of the view that the act of the appellant clearly amounts to fabrication intended to mislead the Court and obtain a fraudulent order by suppressing the real facts, for which the insurance company ought to have initiate criminal liability. However, no such action have been taken by them.

18. This Civil Miscellaneous Appeal is devoid of merits. The only contention raised by the appellant is that the ground urged in the review petition were not pleaded in the counter filed by the insurance company. However, such a contention cannot be a basis to reject the review petition, as the review petitioner clearly demonstrated that they were not aware of those facts at the time of filing the counter. The appellant has not produced any rebuttal evidence to establish that the insurance policy was issued for the vehicle involved in the accident.

Therefore, the Civil Miscellaneous Appeal is without merit and does not warrant any interference and the same is liable to be dismissed. Point is answered accordingly.

19. In such view of the matter, this Civil Miscellaneous Appeal is dismissed. The order dated 15.04.2013 passed in I.A No. 442 of 2009 in M.C.O.P. No.629 of 2007 by the Motor Accident Claims Tribunal (District Judge), Karur, is confirmed. No costs.

11.11.2025

Index : Yes / No
NCC : Yes / No

RM

To

1. The District Judge,
   Motor Accident Claims Tribunal
   Karur.

Copy to

1.The Section Officer,
  ER/VR Section,
  Madurai Bench of Madras High Court,
  Madurai.

R.POORNIMA, J.

RM

Judgment in
C.M.A.(MD)No.1970 of 2013

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