
(2011) 06 MAD CK 0439

In the Madras High Court

Case No : C.M.A. No. 1048 of 2010 and M.P. No's. 1 and 2 of 2010

New India Assurance Company Ltd.

APPELLANT

Vs

Amaravel and S. Arivazhagan

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Insurance Act, 1938 — Section 64, 64(V)(B)

Motor Vehicles Act, 1988 — Section 145, 146, 147, 147(1)

Citation : (2011) 06 MAD CK 0439

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : Elveera Ravindran, for the Appellant; M. Jayachandran, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant/New India Assurance Company Limited, against the award and decree dated 25.11.2009 made in M.C.O.P. No. 844 of 2004, on the file of Motor Accident Claims Tribunal, Fast Track Court, Dharmapuri.

2. The short facts of the case are as follows:

On 21.08.2004, at about 12.20 hours, the Petitioner was proceeding, on the extreme side of the road on his "Hero Honda CD Dawn" bearing Registration No. TN29-F-8055, in order to go to Collectorate Office. While he was proceeding opposite to Gokulam Tea Stall near Collectorate bus stop, on the Dharmapuri to Salem Road, the Ambassador car bearing Registration No. TN09-A-4191, coming from Dharmapuri to Salem, driven by its driver at a high speed and in a rash and negligent manner, dashed against the Petitioner's vehicle. Due to the impact, the Petitioner's right leg bone was fractured and he also sustained multiple injuries all over his body. He was immediately taken to Government Hospital, Dharmapuri, where first aid was given and subsequently he was taken to Salem Kurinji Hospital, where he remained as inpatient for 45 days. Hence, the

Petitioner has filed a claim for Rs. 10,00,000/-against the Respondents, who are the owner and insurer of the car bearing Registration No. TN09-A-4191.

3. The second Respondent, the New India Assurance Company Limited, in his counter has resisted the claim stating that the Petitioner had No. driving licence to drive the two wheeler at the time of accident. It was also stated that the Petitioner had driven his vehicle bearing Registration No. TN29-F-8055, rashly and negligently and had suddenly turned the same, without noticing that the vehicles were plying on the main road and by ignoring the horn sound of the driver of the Car. As the Car was driven slowly, the driver of the Car had averted a major accident. Hence it was stated that the accident was caused only by the rash and negligent riding of the Petitioner. It was also stated that the car bearing Registration No. TN09-A-4191 was not insured with the Respondent on the date of alleged accident. It was also stated that the driver of the Car did not have a valid driving licence to drive the Car at the time of accident. It was further stated that as the Petitioner had not impleaded the owner and Insurance Company of the two wheeler, for proper adjudication, the petition is bad and liable to be dismissed for non-joinder of necessary parties. The Respondent has also denied the averments in the claim regarding age, income and occupation of Petitioner, nature of injuries, period of treatment and permanent disability sustained by the Petitioner. It was stated that the claim was excessive.

4. On the Petitioner's side three witnesses were examined and sixteen documents were marked as Exs.P1 to P16. On the Respondents side, one witness was examined and three documents were marked as Exs.R1 to R3.

5. On the averments of both parties, the Tribunal had framed two issues for consideration, namely;

(i) Was the accident caused by the negligence of the driver of the first Respondent's vehicle and was the vehicle covered under a policy of insurance with the second Respondent?

(ii) Is the Petitioner entitled to get compensation? If so, what is the quantum of compensation?

6. PW1 had adduced evidence which was in consonance with the version of accident as mentioned in the claim. In support of his claim, he had marked Exs.P1 to P11 viz., First Information Report, Discharge Summary issued by Kurinji Hospital, Salem, Wound Certificate, Insurance Policy, Salary Certificate, Receipt for insurance policy, driving licence of Car driver, Discharge summary issued by Karaikudi Medical Hospital, CT Scan report issued by Dr. Shankar, medical bills, transport bills. On the Respondents side, the Administrative Officer of the second Respondent was examined as RW1. Though RW1 had admitted that the accident had occurred, he had adduced evidence that the said accident had not been caused due to any fault on the part of the Car driver. However, the Tribunal were not inclined to accept this contention as he was not an eyewitness of the accident. The Tribunal, on considering the FIR marked as Ex.P1 and finding

that the version of accident mentioned in the FIR was in consonance with the evidence of PW1, as regards, the manner of accident, held that the accident had been caused by the negligence of the Car driver.

7. PW1, had adduced evidence that due to the accident, he had sustained fracture on his right leg bone and severe injuries on his thigh and that he had sustained lacerated injuries all over his body; that he had taken treatment at Dharmapuri Government Hospital; that subsequently, he had taken treatment at Kurinji Hospital, Salem, as inpatient from 21.08.2004 to 28.09.2004, wherein a surgery was done and steel rods were fixed to set right his fractured leg; that he had subsequently received treatment at B.K.N.Hospital, as inpatient, wherein surgery was performed and the steel rods fixed in the leg were removed. He had adduced evidence that subsequent to this, he had taken treatment at K.J.Hospital, Dharmapuri, wherein he had taken treatment under one Dr. Shankar; that subsequently he had taken treatment as an outpatient under one Dr. Tiruvengadam at Samyukta Hospital, Dharmapuri. In support of his evidence, he had marked medical bills totaling Rs. 1,30,650/-and transport bills totaling Rs. 2,200/-. He had further stated that his age was 42 years and that he worked as an Assistant in DPAP, DRDA, Dharmapuri and was earning a sum of Rs. 8,248/- per month and supporting his family. He had further adduced evidence that due to the said injuries, he has difficulty in walking, standing and doing his normal work and that he is unable to walk without the support of a crutch and also unable to drive vehicles.

8. The Doctor J.Manimaran had adduced evidence that the Petitioner had sustained 50% disability and marked Exs.P15, X-ray and P16, disability certificate. But, the Tribunal were not inclined to accept this assessment of disability of the doctor as the Petitioner's salary, which had been Rs. 8,248/-per month at the time of accident had been enhanced to Rs. 14,529/-on 02.04.2008 as per the evidence adduced by PW2 and the Exhibits marked through him namely, Ex.P12, salary certificate, Ex.P13, experience certificate and Ex.P14, the nature of work done by Petitioner. Hence, the Tribunal held that the Petitioner had not incurred any loss of income on account of injuries sustained in the accident. However, it is seen on scrutiny of X-rays of right leg of the Petitioner that the right leg has been disfigured. On seeing the Petitioner, it is evident that there is fluid oozing out between his right knee and foot. Hence, the Tribunal held that the Petitioner had sustained loss of amenities and comfort due to this injury and held that the Petitioner had sustained 40% disability on this count. Accordingly, they awarded a compensation of Rs. 60,000/-under the head of "disability for 40% due to grievous injury" (Rs. 1,500 for 1% disability); the Tribunal further awarded a sum of Rs. 30,000/-for the said grievous injury; Rs. 10,000/-for pain and suffering; Rs. 5,000/-for mental agony; Rs. 2,700/-for transport expenses as per Ex.P11, Rs. 2,000/-for nutrition; Rs. 1,30,651/-towards medical expenses (as per Ex.P19 medical bills), Rs. 2,000/-for loss of comfort; In total, the Tribunal awarded a sum of Rs. 2,42,351/-as compensation to the Petitioner and directed the first and second Respondents to deposit the

said award with interest at the rate of 7.5% per annum, either separately or jointly, within one month from the date of its order.

9. Aggrieved by the said award passed by the Tribunal, the second Respondent/ New India Assurance Company Limited has filed the present appeal to set-aside the award passed.

10. The learned Counsel for the Appellant has argued that the learned Tribunal failed to appreciate that as per the Insurance Policy (marked as Ex.R1), the period of insurance coverage of the Car bearing Registration No. TN09-A-4191 was 19.06.2003 to 18.06.2004 and as per Ex.R3, the period of insurance is from 23.08.2004 to 22.08.2005 and that there was No. insurance cover for the period from 19.06.2004 to 23.08.2004. Hence, the Tribunal was wrong in holding that there was insurance coverage at the time of accident i.e, on 21.08.2004. It was also pointed out that as per the proposal form (marked as Ex.R2), the insured had clearly mentioned the period of insurance coverage sought for the Car bearing Registration No. TN09-A-4191 was for the period from 23.08.2004 to 22.08.2005 and hence the Tribunal went wrong in holding that the premium was paid by the second Respondent/insured on 20.08.2004. It was also pointed out that the learned Tribunal erred in holding that the claimant was suffering from a disability of 40%. Further, the Tribunal after awarding a sum of Rs. 60,000/-for 40% disability, erred in awarding a sum of Rs. 30,000/-for injuries. It was further argued that the learned Tribunal failed to appreciate that the injuries sustained by the claimant is not a schedule injury and the disability, assessed by PW3, the doctor, is not permanent in nature. It was also argued that the other awards granted under the heads of mental agony, pain and suffering, medical expenses, transport and nourishment have been given without any basis. In support of his contention, the learned Counsel has cited the following judgment:

National Insurance Co. Ltd. Vs. Geetha and Others, Motor Vehicles Act, 1988, Section 147 (1) - Motor insurance - Policy - Commencement of - Liability of insurance company - Policy was operative from 10.00 a.m., on 15.06.1998 to midnight of 14.06.1999 - Accident occurred on 15.06.1998 at 5.30 a.m., - Contention that cheque towards premium was given on 12.06.1998 and as premium was paid anterior to the accident, insurance company is liable - Whether insurance company is liable for accident that took place before the specific time and date mentioned in the policy - Held: no, unless insurance company accepts and issues policy, it has No. obligation to pay compensation.

11. The learned Counsel for the claimant argued that the owner of the vehicle remitted the premium to the Insurance Company on 20.08.2004. In the proposal form, the period of insurance coverage was from 23.08.2004 to 22.08.2005. Even though, the period has been mentioned as extending from 23.08.2004 onwards, the premium has been paid on 20.08.2004. On that day, there was No. insurance policy in force. So, the insurance company's duty is to take the coverage from 20.08.2004. The insurance company should not allow the insured/ owner of the vehicle to fix the insurance coverage from 23.08.2004, since on

20.08.2004 there was No. insurance coverage. As such, as the premium had been paid on 20.08.2004, it should be taken that the insurance coverage was effective from 20.08.2004 onwards. The owner of the vehicle cannot dictate to the insurance company to extend coverage of insurance from 23.08.2004 to 22.08.2005, since on 20.08.2004, the insurance policy was not in force. On that day, the premium was paid. In support of his contention, the learned Counsel has cited the following judgments:

(i)Oriental Insurance Company Ltd., v. Sheela Bai and Ors. reported in 2007 ACJ 798

Motor Vehicles Act, 1988, Section 147(1) and Insurance Act, 1938, Section 64VB- Motor insurance - Policy - Commencement of - Liability of insurance company - Policy covers the period from 04.05.1996 to 03.05.1997 and the accident occurred at 6 p.m. On 02.05.1996 - Insurance Company disputed its liability on the ground that accident had occurred prior to policy became effective - Premium was received in cash on 02.05.1996 and cover note was issued on that date - Whether insurance company is liable - Held: Yes.

(ii)National Insurance Company Ltd., v. Abhaysingh Pratapsing Waghela and Ors. reported in 2008 (2) TN MAC 448 (SC)

Motor Vehicles Act, 1988, Sections 145, 146 & 147 - Insurance Act, 1938, Section 64VB - Policy of Insurance - Payment of premium - Effect of Dishonour of Cheque when subsequently amount of premium accepted in cash by Insurer - Cheque issued on 23.01.1995 - Accident took place on 27.01.1995 - Cheque dishonoured and cash paid on 30.01.1995 - Having regard to fact that a Cover Note was issued on 23.01.1995 by Insurer/Appellant, Tribunal as also High Court opined that it was legally obligated to reimburse claim of Third Party - Appeal Against - Contention that in terms of Section 64VB, a contract of insurance would be valid only when cheque issued towards payment of premium is honoured and when cheque is dishonoured contract being without consideration need not be preformed - Further contention that Motor Input Advice cum Receipt, showing validity period of insurance, issued by Insurer was merely a money receipt - Motor Input Advice cum Receipt containing Cover Note number, therefore, it can be supposed that a Cover Note was in fact issued - If a Cover Note had been issued, same would come within purview of definition of "Certificate of Insurance" in terms of Section 145(b) and would also come under definition of Insurance Policy in terms of Section 145(d) - If a Cover Note is issued, it remains valid till it is cancelled - Indisputedly, Insurance Policy was cancelled only after accident took place - Therefore, Cover Note was not cancelled prior to deposit of premium in cash - In such a situation finding of High Court cannot be faulted - No. doubt, a contract of Insurance is to be governed by terms thereof, but a distinction must be borne in mind between a contract of Insurance entered for purpose of giving effect to object and purport of statute and one which provides for reimbursement of liability of owner of vehicle strictly in terms thereof - In that limited sense, a contract of insurance entered into for purpose of

covering a Third Party risk would not be purely contractual - Liability of Insurer which comes within purview of Sections 146 & 147, sub serves a constitutional goal, namely, social justice - Contract of Insurance covering Third Party risk must, therefore, be viewed differently vis-a-vis a contract of insurance qua contract - Therefore, contentions found not acceptable.

(iii) Oriental Insurance Co. Ltd. Vs. Rajesh and Others,

Motor Vehicles Act, 1988, Section 147(1) -Motor Insurance - Policy-Commencement of - Liability of insurance company - Accident at 01.30 pm., Insurance company contended that policy was obtained at 04.50 p.m. Owner contended that premium was paid at 11.20 a.m., to the agent in office of insurance company - Insurance company failed to prove the proposal form and record of receipts of the day to show actual time of receiving premium - Whether the vehicle was insured before 01.30 p.m., and insurance company is liable - Held: yes.

(iv) National Insurance Co. Ltd. Vs. Deivanai and Others,

Appeal (CMA) was preferred by Insurance Company from award passed by MACT Tribunal - Contention urged in the counter by Insurance company was that only on 04.03.1992 the first Respondent's vehicle was insured with this Respondent and hence this Respondent is not liable to pay compensation - Held: It is an admitted fact that the insurance company received the banker's cheque dated 02.03.1992 for Rs. 1,411/- but it is stated by the bank that the cheque was despatched along with the covering letter Ex.B3 to the Insurance Company - But they kept it and put the seal of 04.03.1992 and prepared policy on that date - From the oral evidence, it transpires that both the bank and the Insurance Company are situated in the same building - In this context it is stressed by the learned Counsel for the claimants that by virtue of Section 64(V) (B) of the Insurance Act, 1938, the date of the cheque has to be taken into consideration for the purpose of payment of premium.

(v) New India Assurance Company Limited Vs. V. Bommi and Others,

According to the Appellant, on the date of which the accident took place, the policy had been cancelled and the owner of the vehicle had also been intimated of the same, and so, No. policy was subsisting on the date of the accident.

Cancellation of the policy only entitles the insurer to proceed against the owner and recover what it has paid as per the award, but it must and shall satisfy the innocent third party.

(vi) Oriental Insurance Company Ltd. v. Dharam Chand and Ors., Civil Appeal No. 5204 of 2003

In this case, the premium cheque for the insurance policy was received by the Appellant, the insurance company, on May 7, 1998 at 4.00 p.m., and a cover note was issued at the same time. In columns 3 and 4 of the cover note,

however, it was stated that the insurance would commence from May 8, 1998 and expire on May 7, 1999.

12. In view of the facts and circumstances of the case and arguments advanced by the learned Counsels on either side and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the owner of the vehicle/insured had paid premium on 20.08.2004, but the proposal form mentioned the period for insurance coverage from 23.08.2004 to 22.08.2005. On the date of payment i.e., on 20.08.2004, the insurance policy was not in force. The duty of the Insurance Company was to ask the owner to mention the period in the proposal form as 20.08.2004 to 19.08.2005, since the insurance policy was not in force on the relevant payment date i.e., 20.08.2004, as such a lacuna arises due to the non application of mind of the Insurance Company. Therefore, the Insurance Company is liable to pay compensation to the claimant. It is an admitted fact that once a premium is paid, it is expected that the policy will be functional from the time of payment. Insurance authority and owner cannot act on their own prerogative, since the vehicle was plying on the public road. Therefore, this Court does not find any discrepancy in the impugned award passed by the learned Motor Accident Claims Tribunal and hence the award is confirmed.

13. On 23.04.2010, this Court imposed a condition on the Appellant/New India Assurance Company Limited to deposit the entire compensation amount with proportionate accrued interest and costs to the credit of M.C.O.P. No. 844 of 2004, on the file of Motor Accident Claims Tribunal, Fast Track Court, Dharmapuri. Now, it is open to the claimant to withdraw the compensation amount with accrued interest and costs lying in the credit of M.C.O.P. No. 844 of 2004, on the file of Motor Accident Claims Tribunal, Fast Track Court, Dharmapuri, after filing a Memo along with this order.

14. Resultantly, the above Civil Miscellaneous Appeal is dismissed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal in M.C.O.P. No. 844 of 2004, dated 25.11.2009 on the file of Fast Track Court, Dharmapuri is confirmed. There is No. order as to costs. Consequently, connected miscellaneous petitions are closed.