

(2002) 12 MAD CK 0169**Madras High Court****Case No:** C.M.A. No. 885 of 1996

United India Insurance Company
Limited

APPELLANT

Vs

S. Viswanathan and P. Kuppuraj

RESPONDENT**Date of Decision:** Dec. 16, 2002**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 173

Citation: (2003) 2 ACC 359 : (2003) ACJ 1734 : (2003) 3 LW 852**Hon'ble Judges:** P. Sathasivam, J; A.K. Rajan, J**Bench:** Division Bench**Advocate:** N.B. Surekha, for the Appellant; V. Vijayashankar, for R1 and A.M. Sellambayiram, for R2, for the Respondent**Final Decision:** Dismissed

Judgement

A.K. Rajan, J.

This appeal has been preferred by the Insurance Company against the award passed by the motor Accidents Claims Tribunal, Ariyalur.

2. The claimant filed a claim petition in connection with an accident that took place on 23.2.1992 in which the claimant sustained injuries. The claimant made a claim for Rs. 1 lakh and to prove his claim, the claimant has examined himself as P.W.1 and two other witnesses as P.Ws.2 and 3 and marked Exs.P.1 to P.7. On the side of the respondents, two witnesses were examined and Exs.R.1 to R.5 were marked. After considering the evidence on record, both oral and documentary, the Tribunal found that the accident had occurred due to the negligence of the driver of the motor vehicle and awarded a compensation of Rs. 90000/- together with interest at the rate of 12% p.a. The Tribunal has also held that the vehicle was insured with the second respondent and directed the second respondent to pay the compensation. Aggrieved by the said award, the second respondent, United India Insurance

Company Limited has preferred this appeal.

3. The learned counsel for the appellant submitted that the accident took place on 23.2.1992, whereas the insurance policy expired on 20.2.1992; subsequently, the policy was taken only on 2.3.1992. In between 20.2.1992 and 2.3.1992 there was no valid insurance policy for the vehicle, and therefore, the second respondent/appellant is not bound to pay the compensation, inasmuch as the vehicle was not insured on the date of the accident, with the appellant. In support of the argument, the learned counsel referred to the documents, Exs.R.1, R.2 and R.3. Ex.R.1 is the receipt given by the United India Insurance Company Ltd., Cuddalore, dated 2.3.1992, which reads that "received with thanks a sum of Rs. 459/- only by cheque No. 822406 drawn in Punjab National Bank, Pennadam, dated 20.2.1992". Relying upon this document, the counsel submitted that this proves that the cheque was handed over only on 2.3.1992 to the Cuddalore Branch and immediately after receipt of the cheque, this receipt had been given. Therefore, the counsel submitted that this proves that the cheque was handed over to the respondent only on 2.3.1992, and therefore, the policy was effected only from 12.00 p.m. on 2.3.1992. The counsel further contends that it is clearly proved that the vehicle was not insured with the appellant on the date of the accident.

4. The learned counsel for the respondents submitted that in Ex.R.4, there is a column, which connotes that the amount of Rs. 459/- was collected on 2.3.1992 taking into account the column in which this figure is appeared. Therefore, from this, the counsel submitted that, it is only after the realisation of the cheque amount, this receipt had been given. The policy becomes effective on the date when the premium was paid by the owner to the Insurance Company. Further, he relied upon the evidence of R.W.2, who is the clerk working in the Insurance Company, examined on behalf of the appellant herein; In his chief examination, R.W.2 has admitted that it is a renewal policy; After cross examination of R.W.2 was over, he was further examined in chief after obtaining permission from the Court; In the chief examination he has stated as follows:

"gp.rh.M.1. urPJf;F cz;lhd fhg;gpl;L xg;ge;jk; vd;W Kjy; mKYf;F tUfpwj vd;gijf; fhl;l fl;lzk; brYj;Jtjw;F bfhLf;fg;gl;l fhnrhiyapy; gzk; vd;W fzF;Ff;F tug;gLfpwnjh md;wpypUe; fhg;gPl;L xg;ge;jk; mKYf;F tUtjhFk;. me;jj; njjpia gp.rh.M.1y; 2.3.92 vd;W fhl;lg;gl;Ls;sJ. gp.rh.M.1y; Twg;gl;Ls;s epge;jidfSf;F Vw;gj;jhd; fhnrhiyfis ehq;fs; bgw;Wf; bfhs;fpnwhk;."

From this, the counsel argued that, it is clear that the date mentioned in Ex.R.1 as 2.3.1992 is the date when the amount has been realised on the cheque issued by the petitioner; Therefore, the policy had been issued only after realisation of the amount from the Bank, whereas the cheque for the policy amount had been handed over even on 20.2.1992.

5. The argument of the counsel for the respondents has force. Though from Ex.R.1, it appears that the cheque was presented only on 2.3.1992, the date, as found in Ex.R.1, has been explained by the Officer of the second respondent itself as the date which refers the date subsequent to the realisation of the amount. Ex.R.4 also supports this argument. Therefore, we are of the view that the date mentioned in Ex.R.1 is the date which is subsequent to the realisation of the amount and not the date on which the cheque was presented to the Insurance Company.

6. In the circumstances, even though there are some discrepancies in the evidence of R.W.1, the owner of the motor vehicle, in view of the specific admission by R.W.2 and in view of the decision of the Honourable Supreme Court referred to by the Tribunal itself that when there are some discrepancies with respect to the terms of the insurance policy, the Court has to lean in favour of the insured. Therefore, we are of the view that the case of the owner of the vehicle is acceptable and from the evidence of the owner of the vehicle it is clear that the cheque has been handed over on 20.2.1992 itself, and therefore on the date of the accident, i.e. On 23.2.1992, there was a valid insurance coverage. We uphold the decision of the Tribunal that the vehicle was validly insured on the date of the accident and there is no reason to interfere or alter this finding. Therefore, we find that there was a valid insurance policy on the date of the accident.

7. There is no dispute with regard to the quantum. Therefore, we are of the view that the quantum of compensation awarded by the Tribunal is reasonable, and hence, we do not find any reason to alter the same. We confirm the quantum of compensation.

8. In the result, this appeal is dismissed. No costs.