(2010) 11 MAD CK 0337

Madras High Court

Case No: C.R.P. NPD. No. 2051 of 2010 and M.P. No. 1 of 2010

The United India Insurance Co. Ltd.	APPELLANT
Vs	
Thirumalai and Kumaravel	RESPONDENT

Date of Decision: Nov. 12, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1

Hon'ble Judges: V. Periya Karuppiah, J

Bench: Single Bench

Advocate: S.E. Sivasankari, for J. Chandran, for the Appellant; S. Ambikapathy, for J. Shanmugasundaram, for Respondent No.1, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Periya Karuppiah, J.
This Revision Petition has been filed against the rejection order passed by the lower Court filed in I.A. No. NIL of 2010 in M.C.O.P. No. 1104 of 2006 dated 21.01.2010, an application to review the judgment passed in M.C.O.P. No. 1104 of 2006 dated 19.09.2008.

2. Heard Ms. S.E. Sivasankari, learned Counsel for the Petitioner and Mr. S. Ambikapathy, learned Counsel for the 1st Respondent. Notice to the 2nd Respondent was dispensed with, since he remained exparte before the lower Court.

3. The learned Counsel for the Petitioner would submit in her argument that the main O.P., in M.C.O.P. No. 1104 of 2006 was filed by the claimant (1st Respondent herein) against the 2nd Respondent and the Petitioner before the lower Court prayed for the payment of compensation for the injuries sustained by him in the road accident, happened on 12.08.2005 and the said petition was resisted by the 2nd Respondent by stating that the Insurance Contract in between the owner of the vehicle (2nd Respondent herein) and the Company was disputed. She would further

submit that the enquiry was proceeded by the lower Court by examining the witnesses and ultimately the lower Court had come to a conclusion that the 1st Respondent was entitled to a sum of Rs. 2,82,200/-towards compensation with subsequent interest at 7.5% against the Petitioner (2nd Respondent therein) by holding that there was no denial of the Insurance Policy. She would further submit that the said finding reached by the lower Court is certainly not in accordance with law, when the Petitioner had specifically denied the insurance policy in the counter statement filed by the Petitioner before the lower Court. She would also submit that the vehicle was not insured with the Petitioner on the date of accident and the same could be traced only after the pronouncement of the judgment. She would further submit that when the Petitioner has filed an application for the review of the judgment of the lower Court with all the facts set out, the lower Court had simply rejected the said petition and it has not followed the principles laid down in the judgment reported in 2009(8) MLJ 855 in between Divisional Manager, National Insurance Company Ltd., v. Naseema and others, by distinguishing the facts discussed in the said judgment, which is not correct. She would also submit that the non-production of the policy before the lower Court, at the time of trial will not dis-entitle the Petitioner to bring the correct fact to the notice of the lower Court, that there was no policy on the date of accident and therefore, the lower Court ought to have numbered the application and hear his objections. She would further submit in her argument that the lower Court had not even ordered notice to the Respondents for disposing the same on merits and therefore, the order passed by the lower Court has to be interfered. She would bring it to the notice of this Court made a judgment reported in The Oriental Insurance Co. Ltd. Vs. R. Mani and Another, , for the principle that when an allegation of fraud has been made in a petition and it is prima-facie found to be sustainable, the Authority should not have returned the said application. Therefore, she would request the Court to interfere with the orders passed by the lower Court and to set aside the same and the revision may thus be allowed.

4. The learned Counsel for the first Respondent would submit in his argument that the allegation of fraud cannot be entertained in the application for review, when the Petitioner was guilty of laches, during the time of trial in not producing the policy to prove that there was no policy coverage on the date of accident. He would further submit that it was a fault of the Petitioner for not producing the policy and no reason was adduced on the side of the Petitioner for the non-production of the same. He would also submit in his argument that the Petitioner has to prefer an appeal against the order passed by the lower Court and the said plea could not be entertained in the revision. Therefore, he would request the Court to dismiss the revision since no interference is needed with the order passed by the lower Court. Therefore, he would request the Court to dismiss the revision petition.

5. I have given anxious considerations to the arguments advanced on either side. Indisputably, the Petitioner was fastened with the liability to pay the compensation

as the insurer of the 2nd Respondent, the owner of the vehicle which involved in the accident. The said decision reached by the lower Court was after appraising the evidence adduced before it in a full-fledged enquiry. The Petitioner, as the 2nd Respondent before the lower Court did not produce the policy covering vehicle which involved in the accident, in order to show as to whether there was any policy coverage on the date of accident. The lower Court had simply adjudicated on the basis of non-production of the policy by saying that it was not denied by the insurer before the lower Court.

6. On a careful perusal of the counter statement filed by the Petitioner, as the 2nd Respondent before the lower Court, it had denied the existence of the policy. Apart from that it had also denied that it was not liable to meet the claim of the Petitioner in the absence of the policy 6 particulars. Thereafter, the Petitioner (insurer) had found that the policy covering the vehicle was only for a period of commencing from 08.07.2004 to 07.07.2005 and thereafter, from 18.08.2005 to 17.08.2006 with the Petitioner. It would disclose that there was no policy covering the vehicle for the days commencing from 08.07.2005 to 17.08.2005. The date of accident was admittedly, on 12.08.2005. If the policy is found to be correct, there cannot be any fastening of liability against the Petitioner. However, the award passed by the lower Court on 19.09.2008 is directing the Petitioner (2nd Respondent therein) to pay the compensation to the claimant, as the insurer of the 2nd Respondent herein. Therefore, if the policy is perused, the judgment passed by the lower Court would be found as put-forth by the Petitioner and it may upset the judgment passed by the lower Court. Whether it could be possible to correct the same in the review is the point to be decided at this stage.

7. The judgment of this Court passed in The Oriental Insurance Co. Ltd. Vs. R. Mani and Another, would run thus:

6. Petitioner apart from relying on the above decision also given the circumstances under which he filed the application before the authority. The accident happened on 30.03.1997 and on that date, there is no Insurance Policy at all. A policy was taken only on 31.03.1997. If that be so, the company cannot be made liable. Various other circumstances also pointed out in para.5 of the application before the authority. There is an allegation of fraud and prima facie if it is found to be sustainable, the authorities should not have returned the same for the reasons stated therein.

8. Apart from that the lower Court had discussed the judgment cited before it in 2009 (8) MLJ 855 in between Divisional Manager, National Insurance Company Ltd., v. Naseema and othersand had come to a conclusion that the said principle cannot be applied to the case on hand. The said approach of the lower Court even at the admission stage is not appreciable, since it has to consider after giving notice to both parties, before it and to follow the precedent applicable to the case.

9. In a judgment of Hon''ble Apex Court reported in Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs., , the five points have been enunciated for approaching a review application. The relevant passage would be as follows:

33. The High Court had rightly noticed the review jurisdiction of the Court, which is as under:

The law on the subject-exercise of power of review, as propounded by the Apex Court and various other High Courts may be summarised as hereunder:

(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a Court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.

In our opinion, the principles of law enumerated by it, in the facts of this case, have wrongly been applied.

10. On a careful perusal of the said judgment of the Hon''ble Apex Court, the lower Court could have corrected its judgment by way of review, if it is directed by any one of the points stated in the judgment. As far as this case is concerned, this Court could see that the policy stated have been entered in between the Petitioner and the 2nd Respondent, and the owner of the vehicle do not have the insurance cover on the date of accident. If it is found to be correct, naturally the judgment passed by the lower Court should have been reviewed. The said plea of no policy on the date of accident was already on record in counter statement, filed by the Petitioner as 2nd Respondent, before the lower Court. The proof of the said fact has been now sought to be produced to the notice of the Court by way of review. Therefore, the judgment of this Court reported in The Oriental Insurance Co. Ltd. Vs. R. Mani and Another, is squarely applicable to the present case. Therefore, the lower Court ought to have taken the review application on file provided if it is otherwise in order and to dispose of the same, after giving notice to the Respondents mentioned therein on merits. But the lower Court had shut the door, even, at the admission stage, which is not correct.

11. Therefore, it has become necessary for this Court to interfere with the order of the lower Court and to direct the lower Court to number the said application filed, in which the impugned order has been passed and to issue notice to the Respondents and hear the same and to dispose of the same on merits in accordance with law, in the light of the judgment rendered by the Hon''ble Apex Court reported in Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs., . The lower Court is also directed to dispose of the review application within a period of one month from the date of receipt of a copy of this order.

12. With the aforesaid observations, this revision petition is ordered. No costs.