IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.11.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.1860 of 2010
and
M.P.No.1 of 2010

The Branch Manager,
M/s.National Insurance Company Limited,
Kumbakonam.
.. Appellant/ 2nd Respondent

.. Vs ..

1.Thiru.Anbalagan
'2.Thiru.Rajiniganth
3.Thiru.Prabhu
4.Miss.Brindha
5.Thiru.Neelamegam .. Respondents/claimants and R1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 13.11.2009 made in M.C.O.P.No.17 of 2008 on the file of the Motor Accidents Claims Tribunal(District Judge) Nagapattinam.

For Appellant : Mr.J.Chandran
For RR-1 to 4 :M/s.M.Tamizhavel
For R-5 : Served (No Appearance)

JUDGMENT

This civil miscellaneous appeal is directed against the judgment and decree dated 13.11.2009 made in M.C.O.P.No.17 of 2008 on the file of the Motor Accidents Claims Tribunal(District Judge) Nagapattinam.

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

On 04.04.2007 at 09.00 p.m., the deceased Savithiri was travelling as a pillion rider in the C.T.100 Bajaj Motor Cycle bearing registration No.TN-51D-3060. One Iyappan drove the vehicle. When they were going in Kuttramporuthaniruppu Road, the driver drove the vehicle in a rash and negligent manner and as a result of which the pillion rider Savithiri fell down on the road and sustained grievios injuries on her head. She was immediately taken to Government Hospital, Nagapattinam and then referred to Thanjavur Medical College Hospital and there she died on 13.04.2007 inspite of treatment. The Kilvelur Police have registered a Criminal case in Cr.No.233 of 2007 under sections 279 and 304(A) of IPC against the driver of the vehicle. The 1st respondent's vehicle has been insured with 2nd respondent. Hence, claiming a sum of Rs.6,00,000/-, the husband, two sons and one daughter of the deceased had filed a petition for compensation. The Tribunal, after considering the evidence adduced by both parties, finally awarded a sum of Rs.3,00,000/- towards compensation and directed the appellant/National Insurance Company Limited to deposit the said compensation amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved against the said award passed by the Tribunal, the present appeal is preferred by the appellant/ National Insurance Company Limited.

3. The learned counsel for the appellant/ National Insurance Company Limited would mainly contend that the Trial Court without considering for the pillion rider, the appellant is not at all liable to pay compensation, since, the pillion rider was not covered, under the policy and the Insurance Company is not liable to pay compensation to the claimants. Hence, the Insurance Company has to be exaggerated from the liability. Further, the Trial Court erroneously fixed the compensation of Rs.3,00,000/- without considering the income of the petitioner. Hence, the learned counsel prayed that the award passed by the Tribunal has to be set aside and the appeal has to be allowed.

4. The learned counsel appearing for the respondents 1 to 5/claimants would contend that the Tribunal, after considering the entire evidence and facts and circumstances of the case. Since the second respondent issued the act policy, this policy covered for the pillion rider also. The trial Court have the entire facts and also considering the income of the petitioner appropriate just compensation and there is no illegality or infirmity in the order of the Trial Court has to be set aside.

5. The learned counsel for the respondents 1 to 5 submitted the following rules which are as follows:

In support of his contention, the learned counsel for the respondent has relied upon a decision of the High Court of Andhra Pradesh reported in 1955 (2) T.A.C.3(AP) [Depot Manager, A.P.S.R.T.C Nirmal Vs. Abdul Sattar], wherein it was held as follows:-

> 6. But the position has completely been changed when the new Motor Vehicles Act, 1988 came into force. In Section 147 of the new Act which corresponds to Section 95 of the old Act there is no limit in certain cases as contained in clause (ii) of the old Act. The

corresponding proviso in the old Act contained three clauses (ii) of the old Act. The corresponding proviso in the old Act contained three clauses whereas now there are only two clauses. What was dropped in the new Act is the clause which excluded the coverage for death or bodily injury to persons carried in or upon the vehicle. That means such liability cannot now be excluded from the policy. The results is, when a policy of insurance "is an act policy", it does not necessarily mean that the insurance company will stand absolved from the liability in respect of the pillion rider of a motorcycle.

ii. In support of his contention, the learned counsel for the respondent has relied upon a decision of the High Court of Karnataka reported in II (1997) ACC 328 [Kashmir D.Gudinho and another], wherein it was held as follows.

6. The Tribunal dismissed the claim petition after having recorded the following findings:

(a) In my opinion, that decision is distinguishable and is not of any help to the Insurance Company-3rd respondent in the present case, as in that decision, the accident had taken place on 22.09.1984, that is earlier to 02.06.1986, and in that case, in the context of the date of occurrence 27.02.1986, the third party liability clause was unaffected by the amendment introduced by circular dated 02.06.1986. In that decision, the Hon'ble S.Venkataraman, J., opined that the liability undertaken by the insurer covers the risk of pillion rider by virtue of amendment vide, circular dated 02.08.1996, but there is nothing in the circular to indicate that retrospective effect is to be given to circular and as such it was held that policy did not cover the risk of pillion driver. The present case is distinguishable from Nagaratna's case above referred. In the present case, insurance policy was effective from 06.01.1987 for one year i.e., date of circular therefore, in the present case in view of amendment being applicable, it must be held that the policy covers the risk of pillion rider in the present case. That amendment in the clause of the policy covers the third party risk including death or bodily injury causes to any person including the person conveyed in or on the bodily injury causes to any person including the person conveyed in or on the motor-cycle and it is provided that such person should not have been carried on for hire or reward, then Company has undertaken the liability to compensate or indemnify the insured for whatever sum it is required to pay as compensation to the claimant including the costs and the interest."

iii. In support of his contention, the learned counsel for the respondent has relied upon a decision of the High Court of Madras reported in 2004 (1) TN MAC 146 (DB) [Natarajan Vs. D.Chandrasekaran and others], wherein it was held as follows.

> 5. So, the only question that has to be decided in this case is whether the insurance company is liable to pay the compensation to the appellant, who is a pillion rider, in view of Sec.147 of the Motor Vehicle Act, 1988.
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> 6. In the vehicle in question namely, Balaji Super 1991 which involved in the accident is covered by Insurance policy No.283227, is "Act only Policy" which is taken only to minimum requirements of Section 147 of the Motor Vehicles Act, 1988. In the policy marked as Ex.B-1 it is mentioned regarding limit of liability as such amount as is necessary to meet the requirement of the Motor Vehicles Act, 1988". Even as mentioned in Ex.B-1 the carrying capacity of the said vehicle is tow. In the present case, the accident took place on 05.02.1993. The insurance policy commenced from 02.12.1992 to 01.12.1993. These facts are also not in dispute.

6. Admittedly, on the date of accident i.e., 04.04.2007, the vehicle bearing registration No.TN.51D-3060 was insured with the second respondent/appellant. Admittedly, the policy is an act policy. The policy was produced on the side of the petitioner which was marked by the 2nd respondent on the side of the respondent act policy issued to the above said vehicle. Hence, during the date of accident the vehicle was insured with the second respondent/appellant Insurance Company.

7. Reading of the above said settled principles of law, it is clear that the policy of the Insurance Company is the act policy. It does not apply to the pillion rider of the motorcycle is not at all acceptable. Finally, it was decided that when the policy of the Insurance Company is the act policy, the Insurance Company is also liable to pay compensation to the pillion rider of the motorcycle and insurance company cannot escape from the liability to pay compensation to the pillion rider of the vehicle.

8. Considering the above principles of law, this Court is of the considered view even though the deceased was the pillion rider, the act policy issued by the insurance company also covered the pillion rider. Hence, the insurance company is also liable to pay compensation to the legal heirs of the deceased. This Court is considered view that the trial Court after considering the entire facts directed the second respondent also to pay the compensation amount to the claimants.

9. It is clear that the trial Court after appreciating the age of the deceased and also the income of the deceased awarded just and appropriate compensation of the claimants. This Court finds no illegality or infirmity which warrants any interference in the award passed by the Trial Court.

10. In the result, the civil miscellaneous appeal is dismissed by confirming the judgment and decree dated 13.11.2009 made in M.C.O.P.No.17 of 2008 on the file of the Motor Accidents Claims Tribunal (District Judge) Nagapattinam. Consequently, the connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
District Judge, Nagapattinam.

copy to
The Section Officer
VR Section High Court Madras

+1 cc to M/s.M.Thamizhavel Advocate sr 68566
+1 cc to J.Chandran Advocate sr 68605

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