BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)No.115 of 2016
and
CMP(MD)No.1902 of 2016

The Oriental Insurance Company Limited,
Rep by its Divisional Manager,
Office at Town Hall Road,
Kumbakonam,
Kumbakonam Town and Munsif. ... Appellant/ 2nd Respondent

vs.

1)Kasiveeramani
2)Rani
3)Kanmani @ Kalaiselvi
4)Jeyakumar .. Respondents 1to4/Petitioners 1 to 4
5)Karthikeyan ..5th Respondent / 1st Respondent
6)Manikandan
7)N.C.Kaviyarasan
(6th and 7th respondents remained
exparte before the lower court) ...Respondents 6&7 /
Respondents 3&4

Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 13.08.2015 made in MCOP.No.414 of 2011 on the file of the Motor Accident Claims Tribunal cum III Additional District and Sessions Judge, Thanjavur at Pattukottai.

For Appellant : Mr.K.Bhaskaran
For R1 to R4 : Mr.M.Maran
For R5 : Mr.S.Deenadhayalan

JUDGMENT

It is the unfortunate case of fatal accident caused on account of the accident took place on 19.03.2011 around 11.45 a.m on Perungatur to Kancheepuram road. The legal heirs of the deceased filed an application seeking compensation before the Motor Accident Claims Tribunal cum III Additional District and Sessions Judge, Thanjavur at Pattukottai, and the Tribunal considering the facts and the circumstances of the case, awarded Rs.4,25,000/-, as total compensation with interest at 7.5% per annum. The appellant insurance company preferred this appeal, on the ground that the deceased was the occupant of the Car which is a private vehicle. The policy is an ''Act only Policy'' and according to the policy, the occupant of a private vehicle is not entitled for any compensation, in view of Section 147 of the Motor Vehicles Act. The policy was also marked as Ex.R1 and the Tribunal also made a finding to the effect that the nature of the policy was Act only Policy.

2.Learned counsel for the respondents/claimants contended that though it is an Act only policy, the Tribunal considered all these aspects and ordered for pay and recovery. Hence, there is no infirmity in the award and accordingly, this appeal is to be dismissed.

3.Such being the situation, this Court is of the view that the fixation of liability on the part of the appellant insurance company by the Tribunal, is in violation of Section 147(1)(ii) of the Motor Vehicles Act, which states that in order to comply with the requirements of this Chapter, a policy of insurance must be a policy against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Further, the Division Bench of this Court in ***National Insurance Company Ltd., vs. Pooja Manoj Singh and others,*** reported in ***2010 (2) TN MAC 550 (DB),*** has held as follows:-

> ''9. We have heard learned counsel for the parties. It has not been disputed that originally the Insurance Company was not impleaded as party respondent in the Claim Petition. It was at the instance of the Transport Corporation, the Tribunal by its order impleaded the Insurance Company. The appellant Insurance Company took a very specific and categorical defense that although the Zen Car was insured, but the policy was an Act Policy, and no additional premium was paid for covering the risk of occupants of the car. In spite of the above said admitted position, the Tribunal without recording any finding with regard to the liability of the Insurance Company proceeded on the basis that since there was head on collision between the bus and the car, the liability should be apportioned at the ratio of 2:1. We are of the view that the Tribunal committed error of law in holding the Insurance Company liable to pay the compensation amount. As noticed above, the insurance policy of the car, which was a private car, was an Act Policy, and therefore, the occupants of the car were not covered under the policy. In the case of Oriental Insurance Co. Ltd. Vs. Jhuma Saha reported in 2007 ACJ 818 (SC), the fact of the case was that the deceased was the owner of the vehicle, a Maruti Van. While he was driving the said vehicle, it dashed with a tree and the owner of the vehicle succumbed to the injuries. A claim case was filed by the legal representatives of the deceased for

compensation. The insurance company contested the claim and denied its liability on the ground that no additional premium was paid covering the risk of the owner of the vehicle. The Apex Court observed:

> ''13. The additional premium was not paid in respect of the entire risk of death of or bodily injury to the owner of the vehicle. If that be so, section 147(1)(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case.''

Hence, in the facts of the case, it can safely be couched that the appellant Insurance Company has no liability to pay the compensation.''

4.Hence, the order of the Tribunal is infirmed and liable to be set aside and accordingly, set aside. The claimants are entitled to recover the compensation from the owner of the vehicle in the manner known to law. The appellant is permitted to withdraw the entire award amount with proportionate accrued interest, if any, lying in the credit of the claim petition, by filing necessary application before the Tribunal.

In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, CMP(MD)No.1902 of 2016 is closed.

Sd/-
Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

III Additional District and Sessions Judge cum
Motor Accident Claims Tribunal,
Thanjavur at Pattukottai.

CMA(MD)No.115 of 2016
01.12.2016

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