BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2016

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.M.A.(MD)No.814 of 2011

The United India Insurance Co. Ltd.,
D.No.235, Gandhi Road,
Arani 632 301. ...Appellant

Vs.

1.S.Renuka
2.K.Thillai Nayagi
3.Kovai Thangam

4.Bharat Raut & Company,
16, Cenotaph Road,
West Care Towers and II Floor,
Teynampet, Chennai.

5.Sai Motors,
Opp.to Sai Wards & ICICI Staff Quarters,
N.S.Phadke Merg,
Near Fly Over Bridge Signal,
Andheri,
East Mumbai 400 069. ...Respondents

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.11.2010 in M.A.C.O.P.No.50 of 2005 passed by the Motor Accident Claims Tribunal, District Judge, Karur.

For Appellant : Mr.G.Prabhu Rajadurai
For Respondents : Mr.N.Sudhagar Nagaraj for R1 to R3
Mr.R.Maheswaran for R5

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 03.11.2010 in M.A.C.O.P.No.50 of 2005 passed by the Motor Accident Claims Tribunal, District Judge, Karur.

2.The respondents 1 to 3 herein are the claimants before the Tribunal. The claimants claimed compensation for the death of the deceased viz.,K.Srihari in a road accident claiming a sum of Rs.10 lakhs against respondents 4 and 5 and the appellant.

3.The facts of the case are as follows:



On 06.10.2004 when the deceased was travelling in a Ford Ikon car bearing registration No.TN-07 L-7668 and when the car was nearing at Bharathi Park Road, Coimbatore the driver of the car drove the car in a rash and negligent manner and dashed against a tree. Due to the impact, one K.Srihari sustained multiple injuries and died on the spot and the driver of the car died on the spot and one C.R.Ravichandran, who was travelling in the said car, sustained injuries. A case in Crime No.382 of 2004 was registered by Kovil Town Police Station. Respondents 1 to 3 are wife and parents of said Srihari and they are the claimants in M.C.O.P.No.50 of 2005.

4.The 4th respondent / 1st respondent in M.C.O.P. has filed a counter affidavit before the Tribunal denying the manner of accident. It is stated that the 5th respondent is the owner of the car and the car was insured with appellant. The appellant / Insurance Company and the 5th respondent are jointly liable to pay compensation. It is contended that the claimants have to prove the negligence on the part of the driver of the car and denied the age, occupation and income of the deceased.

5.The appellant has filed a counter statement denying all the averments including age, occupation and income of the deceased. It is contended that the claimants have to prove the negligence on the part of the driver of the car. The insured violated terms of policy and policy is only Act policy and appellant is not liable to pay compensation to occupants of car and prayed for the dismissal of the claim petition.

6.Before the Tribunal, on the side of the claimants 3 witnesses were examined as P.W.1 to P.W.3 and 7 documents were marked as Exs.P1 to P7. The respondents did not let in any oral and documentary evidence.

7.After considering the oral and documentary evidence, the Tribunal awarded a sum of Rs.6,44,000/- as compensation with 7.5% interest per annum to the claimants. Aggrieved by the said award, the present appeal is filed by the appellant / Insurance Company by questioning the liability.

8.The learned counsel for the appellant / Insurance Company submitted that the present appeal is filed by questioning the finding rendered by the Tribunal in fixing the entire liability on the appellant / Insurance Company. The learned counsel for the appellant / Insurance Company has submitted that the respondents 4 and 5 have committed the breach of policy as they have not intimated to the Insurance Company about the transfer of the vehicle. He also submitted that the occupants in a private car are not covered under the policy unless the policy is a comprehensive one. The Tribunal ought to have dismissed the claim petition on the ground that the policy issued was an act policy and the same would not cover the occupants.

9.Per contra, the learned counsel for the respondents 1 to 3 / claimants contended that claimants have proved that accident occurred only rash and negligent driving by driver of the car and Tribunal has rightly fixed the liability on the appellant and respondents 4 and 5 and also argued that compensation may be enhanced.



10.Heard the learned counsel for the appellant / Insurance Company and the learned counsel appearing for the respondents 1 to 3, the 4th respondent and perused the entire materials on record. There is no representation for the 5th respondent.

11.The learned Judge considered the evidence of P.W.3 eye witness and held that accident took place due to rash and negligent driving by driver of the car. The appellant contended that the insurance policy taken by insured is only Act policy and not a comprehensive policy and therefore, the appellant / Insurance Company is not liable to pay compensation to occupants of car. The appellant did not substantiate this contention by acceptable evidence. The appellant has not produced copy of insurance policy and did not deny that the car was insured with appellant. Therefore, the appellant is liable to pay compensation to the occupants of car. The appellant alleged that owner of car committed breach of terms of policy. He failed to allege and prove the nature of breach committed by owners. In the circumstances, the contentions of the appellant / Insurance Company that they are not liable to pay compensation, has been rightly rejected by the Tribunal. The Tribunal has given cogent and valid reasons for holding the appellant liable to pay compensation. There is no circumstances warranting interference with the said finding.

12.The appellant filed an application for filing and marking the insurance policy as additional document. The learned counsel for the appellant relied on the following judgments and submitted that this Court can receive the insurance policy as additional document.
(i) 1988 ACJ 270,
(ii) 1994 ACJ 662,
(iii) AIR 1982 Mad. 176 and
(iv) 1983 (54) Company case 608.
In view of these judgments, application for receiving additional documents is ordered. The insurance policy is taken on file and marked as Ex.B.1 From the insurance policy, it is seen that it is only Act policy and not a comprehensive policy. The learned counsel for the appellant / Insurance Company relied on decisions reported in *1988 ACJ 270 (National Insurance Co.Ltd., Vs. Jugal Kishore) and 1994 ACJ 622 (New India Vs. Anil Mathew)* and submitted that the Insurance Company regardless of question of liability would pay the entire amount of award and thereafter, recover the amount over and above the liability from the owner / driver of the vehicle.

13.It is to be noted that the Hon'ble Supreme Court has evolved principle of pay and recovery. It is a social welfare legislation with an intention that claimants should not suffer in view of breach of terms of insurance policy.

14.In the judgment reported in (i) 2012(1) TNMAC 117 (DB Mad.) (Dr.Balaji Vs. K.Sunil Kumar and National Insurance Company Ltd.,), (ii) 2012(1) TNMAC 394 DB (Iffco Tokyo General Insurance Company Limited Vs. Jafter Sadiq), (iii) 2013 (2) SCC 41 (Manager, National Insurance Co.Ltd., Vs. Saju P.Paul and another) and (iv) AIR 2009 SC 2987 (New India Assurance Company Ltd., Vs. Suresh Chandra Aggarwal), the Hon'ble Apex Court and this Court have held that even if insurance company is not liable to pay compensation on the ground of breach of policy condition, it can be directed to pay compensation amount awarded at the first instance and subsequently, recover the same from the owner of the vehicle. Applying the principle of pay and recovery, order of Tribunal is modified only to the extent that the Insurance company is directed to pay compensation amount at the first instance and recover the same from the respondents 4 and 5.

15.The amounts granted by the Tribunal in all the heads are just and proper and they need not be interfered or modified.

16.In view of the judgment cited supra, the appellant / Insurance Company is directed to pay the compensation amount as fixed by the Tribunal with interest to the claimants and later recover the same from the owner of the vehicle. However, the mode of recovery shall be made as follows:

> "For the purpose of recovering the compensation amount from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the insured was the subject matter of determination before the Tribunal and as if the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured/owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured".

17.In the result, the Civil Miscellaneous Appeal is partly allowed directing the appellant to pay the compensation amount in the first instance and recover the same from the respondents 4 and 5 and in all other respects the decree dated 03.11.2010 in M.A.C.O.P.No.50 of 2005 passed by the Motor Accident Claims Tribunal, District Judge, Karur, is confirmed. No costs.



18. The appellant / Insurance Company is directed to deposit the entire award amount together with interest, after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their share, as per the apportionment made by the Tribunal, on filing proper application.

Sd/-
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar(CS)

To
The Motor Accident Claims Tribunal, District Judge,
Karur.

Copy to : The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.G.Prabhu Rajadurai, Advocate in SR.21702
+1cc to Mr.N.Sudhagar Nagaraj, Advocate in SR.22102

C.M.A.(MD)No.814 of 2011
18.04.2016

NBJ
PBK/GSV-PM/SAR-I 08.06.2016 ::5P-5C: