IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

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THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.NO.1339 OF 1999
AND
CROSS.OBJECTION S.R.NO.53054 OF 2000

CMA.No.1339 of 1999
Oriental Insurance Co. Ltd.,
8, Esplanade Road,
Chennai 600 108. ... Appellant/2nd Respondent

Versus

1. P.Vijayarangam ... 1st Respondent/Petitioner

2. R.Venkatesulu ...2nd Respondent/1st Respondent

Prayer :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Award and Decree dated 04.12.1997 made in M.C.O.P.No.4209 of 1995 on the file of the Motor Accident Claims Tribunal, (V Judge, Court of Small Causes), Chennai.

For Appellant : Mr.R.Sivakumaran

For 1st Respondent: M/s.Y.Jayanthi Bhaskar, for Mr.J.Mahalingam

Cross.Objection S.R.No.53054 of 2000

P.Vijayarangam ... Cross Objector/ Respondent 1

Versus

1. R.Venkatesulu
2. Oriental Insurance Co. Ltd.,
8, Esplanade Road,
Chennai 600 108. ... Respondents/ Appellants

Prayer:-

Cross objections filed under Order 41 Rule 22 CPC, to enhance the award amount to the Cross-Appellants.

For Cross Objector : M/s.Y.Jayanthi Bhaskar, for Mr.J.Mahalingam

For 2nd Respondent : Mr.R.Sivakumaran

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Award and Decree dated 04.12.1997 made in M.C.O.P.No.4209 of 1995 on the file of the Motor Accident Claims Tribunal (V Judge, Court of Small Causes), Chennai.

2. The brief facts leading of the claim petition are as follows :-

On 01.06.1995 at about 5.30 p.m., when the claimant was travelling in a car bearing Registration No.TMG 5355 and proceeding near Onkur Check Post from South to North, the driver of the car drove rashly and negligently and dashed against the stationed private Bus bearing Registration No.TN 45 C 2929 on the backside and the claimant sustained grievous injuries. The claimant has claimed a sum of Rs.4,00,000/- as compensation.

3. The appellant/Insurance Company, in the counter statement, has denied the possession of valid and effective driving license by the driver of the car at the time of accident also denied the date of the accident and insurance of the vehicle with the Insurance Company. The other aspects denied in the counter statement is fixing the negligence only on the part of the driver of the bus alone. The other aspects regarding nature of injury, age, occupation, income, treatment and disability and the claim at Rs.4,00,000/- were also denied by the respondent.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that whether the policy taken by the insured is an Act Policy or Comprehensive Policy, the Insurance Company is liable to pay the compensation and accordingly awarded a sum of Rs.3,19,500/- under various heads as follows :

Heads	Amount awarded by the Tribunal (Rs.)
For Loss of Income for 4 months (during the treatment period)	15,100.00
For Nourishment	2,000.00
For Transport expenses	2,000.00
For Medical Expenses	2,00,000.00
For pain and suffering	10,000.00
For Disability	70,000.00
For loss of income	20,000.00
Total compensation	3,19,100.00

Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal.

5. In the grounds of appeal, the appellant/Insurance Company has stated that the first respondent is an occupant in the car at the time of accident and the policy coverage is only an Act Policy and there is no extra premium paid by the insurer covering the occupants of the car. The further grounds raised in the appeal is that as per the terms and conditions of the Policy-Ex.R1, the occupant is not covered. Hence, the appellant is not bound to indemnify the claimant.

6. Heard both side and perused the documents available on record.

7. It is the argument advanced by the appellant is that R.W.1 was examined and Ex.R1 was marked which is the Act Policy and as per the coverage under the said policy, the occupant of the car who is a third party, is not entitled for any compensation.

8. On the other hand, it is argued by the respondent/claimant that though the occupant of the car is the third party, he should not be deprived of any compensation by the Insurance Company, when the negligence was on the part of the driver of the said car.

9. On the side of the appellant, it is argued by citing the case law in 2013 ACJ 199 (National Insurance Company Ltd., Versus Balakrishnan and another). The relevant portion of the Judgment reads as follows :

"A. Motor Vehicles Act, 1988, Sections 147, 149 and 168 - Third party risk - Car insured in the name of company - Managing Director travelling in the Car - Met an accident and sustained injuries - Company will be considered owner of the Car and not the Managing Director - Company and the Managing Director are two different legal entities and hence, the Managing Director cannot be equated with the owner - Managing Director with be treated as passenger - Insurance Company liable to pay if any policy taken by Company was comprehensive/ package policy and not if the policy taken was "Act Policy" - The question whether in the instant the Policy was Act Policy or comprehensive/package policy not decided by Tribunal and High Court - Matter remitted to Tribunal. 2011 ACJ 1415, Approved.

21. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi

High Court and we have also reproduced the same."

In the above said background, it is argued by the appellant that since the policy is an Act Policy and no extra premium was paid for the occupant of the car, the Insurance Company is not liable to pay the compensation.

10. On the other hand, it is argued by the respondents/claimants that the policy produced before the Tribunal is only the certified copy and not a original.

11. On a perusal of the Award and Decree, it is found that the Tribunal has fixed the liability irrespective of the fact that the policy is the Act Policy or comprehensive policy, the Insurance Company is liable to pay the compensation. It is argued by the appellant that the owner of the vehicle has not appeared and produced the policy before the Tribunal, and that there is no premium paid for the occupant of the car. Hence, the Insurance Company is not liable to pay the compensation.

12. In view of the arguments and also the decision made in 2013 ACJ 199 cited supra, the Insurance Company is not liable to pay the compensation. Further, arguments were advanced by the claimant for enhancement of compensation. When the liability fixed on the Insurance Company itself is not considered, the plea for enhancement also cannot be considered. Accordingly, the cross objection is dismissed in SR stage itself.

13. This Civil Miscellaneous Appeal is allowed. No costs. The amount, if any deposited by the appellant/Insurance Company is permitted to be withdrawn by them.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(V Judge, Court of Small Causes), Chennai.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.71694
+1cc to Mr.J.Mahalingam, Advocate, S.R.No.72524

CMA.No.1339 of 1999

LN(CO)
CS/19/12/2020