IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.1935 of 2007

United India Insurance Co. Ltd.,
Branch Office,
4/23-G, New Edapaddy Road,
Sankari, Salem District. …. Appellant

Versus

1.R.Chandirakumar
2.P.Kumar
3.G.Eswaramoorthy …. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 23.01.2006 made in M.C.O.P.No.244 of 2002 on the file of the Motor Accident Claims Tribunal (Sub Court) Sankari.

For Appellant : Mr.M.B.Gopalan

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 23.01.2006 made in M.C.O.P.No.244 of 2002 on the file of the Motor Accident Claims Tribunal (Sub Court), Sankari.

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

On 10.04.2002 at about 3.00 p.m., the claimant and his uncle Kumar were returning from Salem to his native place in a TVS Suzuki bearing Registration No.TN-27-V-2575, at that time, the claimant was travelling as a pillion rider and the said Kumar was driving the Motor Cycle and when they were turning near Vettuvapatti, Maheswaran Kalyana Mandapam in Idapaddi Road, the School van belongs to Navasakthi Schools suddenly came in the opposite side. When the rider of the two wheeler applied sudden break to avoid accident, both the rider of the two wheeler and the pillion rider Kumar fell down and thrown out on the road, due to which, the claimant sustained injuries all over the body including fracture. Hence, 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 mode of accident and even the involvement of the said vehicle and the said occurrence also denied by them. It is also stated that, due to the negligence on the part of the rider of the two wheeler, the accident occurred. The other aspects regarding the nature of injury, period of treatment and expenses incurred by the claimant were also denied by the appellant/Insurance Company and the claim made at Rs.4,00,000/- is also denied as excessive and without any proof.

4. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the Motor Cycle and hence fixed the liability on the 1st and 2nd respondent and directed them to pay the compensation of Rs.2,32,000/- jointly and severally to the claimants. The compensation awarded by the tribunal under various heads is as follows;

Heads	Sum awarded by the Tribunal (Rs.)
Disability	25,000.00
Pain and suffering	20,000.00
Transport expenses	2,000.00
Nourishment	5,000.00
Medical Expenses	45,000.00
Furture Medical expenses	15,000.00
Loss of future earning capacity	1,20,000.00
Total compensation	2,32,000.00

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

5. In the grounds of appeal, it has been stated that the determination of loss of earning for 10 years calculated by the Tribunal at Rs.1,20,000/- is very much excessive and without any proof of such loss of earning capacity. It is further stated that the sum awarded for pain and suffering, permanent disability, medical expenses were also on the higher side. The nature of injury and the percentage of disability assessed by the Tribunal are all exaggerated. On the whole, the sum awarded by the Tribunal is excessive.

6. Heard the learned counsel for the appellant and perused the materials available on records.

7. Though the appellant/Insurance Company has raised number of grounds in the appeal, the main argument is on the point of liability. It is argued by the appellant that the claimant sustained injury, while he was travelling as a pillion rider in the said vehicle. The vehicle was insured with the appellant/Insurance Company Act policy. As per the terms of Act Policy, the Insurance company is liable to pay the compensation only to third parties. In the present case, the claimant was travelling in the said vehicle as a pillion rider and the policy was also marked as Ex.R1 before the Tribunal. In view of the terms and conditions of the said policy, the Insurance company is not liable to pay the compensation to the claimant, who was a pillion rider.

8. The learned counsel for the appellant/Insurance Company has produced a judgment reported in 2009 ACJ 104 (General Manager, United India Insurance Co. Ltd., versus M.Laxmi and other). The relevant portion of the Judgment reads as follows :

> "Motor Vehicles Act, 1988, Section 147 (1)-Motor insurance-Act Policy-Pillion rider - Liability of Insurance company - Death of Pillion rider when the scooter hit a bullock cart because of rash and negligent driving of the scooter - Tribunal held that insurance company is not liable - High Court relying upon circular of Tariff Advisory Committee which states that standard from for motor cycle should cover liability to pillion passenger affixed liability on the insurance company - Circular of Tariff Advisory Committee is applicable only in case of comprehensive policy where as policy in this case is Act policy - whether insurance company is liable - Held: No; Tribunal's order restored.
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> 27. Furthermore, sub-clause (i) of clause (b) of sub section (1) of section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub- clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle 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"

In view of the above decision, we must uphold the contention of appellant insurance company that it owed no liability towards the injuries suffered by the deceased who was a pillion rider, as the insurance policy was a statutory policy and hence it did not cover the risk of death of or bodily injury to a gratuitous passengers.

9. The learned counsel appellant/Insurance Company has also argued by citing the other case law reported in 2015(1) Tn MAC 19 (DB) (New India Assurance Co. Ltd., versus S.Krishnasamy). The relevant portion of the Judgment reads as follows :

> "Motor Vehicles Act, 1988 (59 of 1988), Section 147 - Private Car - Act only policy - Liability of insurer in respect of occupants of car - whether occupants would come under category of "Third party" - Held, occupants of private car cannot be termed as "Third party" - Admittedly, car insured under Act Policy and not under Comprehensive Policy- No premium paid for gratuitous passenger/occupant - When policy covers only "Third party" rise and risk of occupants of car not covered, insurer cannot be held to be liable to pay compensation - Tribunal not justified in directing insurer to "Pay and Recover" - Owner of private car alone held liable.
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> 19. Hence, we are of the considered view that since the Act Policy did not cover this risk, the Insurance Company is not liable to pay any Compensation to the Claimants/Dependents of the deceased and the owner of the vehicle alone is liable to pay damages to the claimants, as the accident occurred due to rash and negligent act of the driver of the vehicle".

10. In view of the above decisions and also considering the fact in the present case also that the claimant was traveling in the said vehicle as pillion rider and the policy that was taken by the owner is Act Policy, this Court is of the view that the Insurance company is not liable to pay compensation as per the said policy. Accordingly, the award passed by the tribunal is modified to the effect exonerating the Insurance Company from its liability and the Insurance Company is permitted to withdraw the amount, if any, already deposited before the Tribunal.

11. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lpp

To
1. The Motor Accident Claims Tribunal
(Sub Court) Sankari.

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

+1cc to M/s.M.B.Gobalan, Advocate, S.R.No.74556

VSN(CO)
nvi/29.05.2020