IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 06.12.2018

DELIVERED ON 11.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.3255 of 2010 and
CMP No.1 of 2010

The New India Assurance Company Limited,
No.79, Paramathy Road,
Ram Complex,
Namakkal Town,
Namakkal District. ... Appellant/2nd respondent

Vs.

1. Tamilarasi ... 1st respondent/claimant

2. R.Subramanian ... 2nd respondent/1st respondent
(2nd respondent remained absent and
was set exparte in the lower court and
hence notice may be dispensed with)

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 30.04.2010 passed in M.C.O.P.No.784 of 2005 by the Motor Vehicle Accidents Claims Tribunal, Fast Track Court, Namakkal.

For Appellant : Mr.N.Vijayaraghavan

For 1st Respondent : Mr.P.Thangaraju

Second Respondent : Exparte

J U D G M E N T

The appellant is the New India Assurance Company Limited, Namakkal and they filed the present appeal under Section 173 of the Motor Vehicles Act 1988 questioning their liability and also quantum of compensation awarded by the tribunal.

2. The claimant/first respondent filed a claim petition in MCOP No.784 of 2005 before the Motor Vehicle Accident Claim Tribunal, Fast Track Court, Namakkal seeking

compensation of Rs.3,00,000/- for the injuries sustained by her in a road accident that took place on 29.05.2005.

3. The brief case of the claimant is as follows. On 29.05.2006, at about 16.20 hours, the claimant was travelling as a passenger in an Ambassador Car bearing registration No.TN-45-6129, belonging to the first respondent, along Pudupatti Junction Road and the driver of the Ambassador car drove the car rashly and negligently and hit a tree standing on the left hand side of the road, as a result of which, she sustained injuries all over her body. According to the claimant, since the first respondent's car was insured with the 2nd respondent, both of them are jointly and severally liable to pay compensation to the claimant.

4. In the trial court, the first respondent remained absent and was set exparte.

5. The Insurance company (2nd respondent)/ appellant resisted the claim petition by filing a counter affidavit before the tribunal.

6. The specific contention of the insurance company was that since the insurance company had issued only an " Act policy" , the occupant of the car is not entitled to get any compensation from the insurance company. However, the learned trial judge observed that a person, who is not a party to the contract of insurance, would be a third party and in view of the same, the insurance company would be liable to pay compensation, even if the vehicle was only having third party insurance (Act Policy) and ultimately awarded a compensation of Rs.1,01,000/- together with interest at the rate of 7.5% per annum and directed the appellant herein to deposit the entire compensation amount.

7. Aggrieved over the compensation awarded by the tribunal, the appellant/Insurance company has filed the present appeal.

8. Mr.N.Vijayaraghavan, learned counsel appearing for the appellant relied on the decision of Division Bench of this court in New India Assurance Company Limited Vs. S.Krishnasamy reported in 2015(1) TN MAC 19 (D.B) and contended that the occupants of a private car cannot be termed as a third party, especially, when the car had only " Act Policy" and not " Comprehensive Policy". According to him, no premium was paid for gratuitous passenger/occupant and that the policy covers only the third party risk. He therefore contended that the tribunal was wrong in fastening liability on the insurance company.

9. Per contra, Mr.P.Thangaraju, learned counsel appearing for the first respondent/claimant would contend that since the claimant was travelling in a private car, she has to

be construed as a third party, when there is negligence on the part of the driver of the said car and therefore, the insurance company is liable to pay compensation to her.

10. The tribunal while holding that the first respondent/claimant is a third party, has relied on the decision in Rani Gupta and others Vs. M/s United India Insurance company limited and others reported in 2009(1) TN MAC 499 (S.C), without understanding that in the said decision, the owner of the car had a " Comprehensive Policy" / " private car package policy ", in which the occupants would be entitled to get compensation from the insurance company.

11. While deciding the claim petition under Motor Vehicle Act, the tribunal should examine the terms of the policy produced by the insurer and in the event of denial of liability, the finding should be recorded with regard to the nature of the policy, as to whether it was " Act Policy " or " Package Policy". In the instant case, the tribunal has not given any definite findings in this regard.

12. In the decision of the Division Bench of this court in Royal Sundaram Alliance Insurance Company Limited V. A.Meenakshi reported in 2009(1) TNMAC 249, the deceased was a passenger in a vehicle and on account of negligence of the driver, the accident took place, leading to the death of the passenger and the legal heirs of the deceased claimed compensation. The Insurance company disputed the claim on the ground that the passengers, who travelled in the car were gratuitous passengers and therefore, the insurance company is not liable to pay any compensation. It was also contended by them that on payment of an additional premium under the insurance policy, coverage can be extended to five unnamed persons, for a capital sum of Rs.70,000/- each, in terms of India Motor Tariff (IMT) 16 and therefore, even if the insurance company is liable to pay compensation, its liability can be restricted to only Rs.70,000/- and not more than that. After considering the policy and the limits of liability, set out in the Motor Vehicles Act, 1988, the Division Bench held that a comprehensive/package policy covers the risk of the occupants also and therefore, the insurance company cannot escape from its liability to pay compensation.

13. In Sagar Chand Phool Chand Jain Vs. Santosh Gupta reported in 1985 ACJ 585, the Delhi High Court held that when the contract of policy describes it as a contract for " private car (comprehensive)" and provides for liability to third parties, the insurance company liable to indemnify the insured in the event of an accident caused by or arising out of the use of the motor car.

14. Under the Indian Motor Tariff (IMT), different types of policies are issued and they are contained in IMT Section 7 (page 107 of IMT). They are

a. Standard form for liability only policy,

b. Standard form for private car package policy.

c. Standard form for two wheeler package policy.

d. Standard form for commercial vehicles package policy.

e. Standard form for motor trade package policy and the like. Each policy is split into different sections to deal with different contingencies and the parties bind themselves to the terms of the clause contained in each section of the policy. For example, the package policy for a private car which is applicable to the present case contains:-

Section I Loss of or damage to the vehicle insured, Section II Liability to third parties, Section III Personal accident cover for owner-driver there are other conditions and limits. In this appeal, we are concerned with the liability of the insurance company in respect of a gratuitous passengers/occupants in a private vehicle (car).

The first policy in Section 6 of IMT is liability only policy or act only policy. In that the liability to third parties is set out as hereunder:-

LIABILITY TO THIRD PARTIES:

i] Subject to the Limit of liability as laid down in the schedule hereto, the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle anywhere in India against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act.

ii] damage to property other than property belonging to the insured or held in trust or in the custody of control of the insured up to the limit specified in the schedule (emphasis supplied).

15. In the instant case, the specific contention of the insurance company is that it is an " Act policy" which would not be covered for the inmates of the car. A perusal of the insurance policy (Ex.R1) clearly shows that it is only an Act policy. Only a comprehensive/package policy would cover the liability of the inmates of the car or pillion rider in a scooter and hence the insurance company is not liable to pay compensation.

16. Though the appellant/insurance company has questioned the quantum of compensation amount, the claimant/first respondent has not filed any appeal or cross objection against the quantum of compensation awarded by the tribunal. A perusal of quantum of award passed by the tribunal seems to be very reasonable and therefore, I do not see any reason to upset the quantum of award passed by the tribunal.

16. In the result,

(i) The appeal is allowed. No costs. The connected miscellaneous petition is closed.

(ii) The quantum of compensation awarded by the tribunal is upheld.

(iii) The second respondent/owner of the Ambassador car is directed to deposit the entire compensation of Rs.1,01,000/- along with interest at the rate of 7.5% per annum within a period of 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the second respondent/owner of the Ambassador car, the claimant is entitled to withdraw the same, after following due process of law.

(v) The appellant/Insurance Company is exonerated from paying the compensation amount and they are at liberty to withdraw the compensation amount, if already deposited by them.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mst

To

1. Motor Vehicle Accidents Claims Tribunal,
Fast Track Court, Namakkal.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 85569
+1cc to Mr.C.Thangaraju, Advocate, S.R.No. 85979

CMA.No.3255 of 2010
and CMP No.1 of 2010

RSI(CO)
GN(24/01/2019)