IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.Nos.2218, 2219 and 2220 of 2011 and
M.P.No.1 of 2011 in C.M.A.No.2218 of 2011 and
M.P.No.1 of 2011 in C.M.A.No.2219 of 2011 and
M.P.No.1 of 2011 in C.M.A.No.2220 of 2011

The Oriental Insurance Company Limited
Rep by its Branch Manger,
No.90-A, Thuraiur Road,
Namakkal. ... Appellant in all the C.M.As.

..Vs..

P.Narendran ..1st respondent in C.M.A.No.2218 of 2011/Petitioner
M.Saravanan ..1st respondent in C.M.A.No.2219 of 2011/Petitioner
N.Jayashree ..1strespondent in C.M.A.No.2220 of 2011//Petitioner
G.Ajeethan
K.Shanmugam
Managing Director,
Tamil Nadu Government Transport Corporation,
Divisional - I, Salem. .. 2 to 4 Respondents in all the C.M.As./
Respondents 1,3 7 4
(Respondents 2 & 3 Exparte before
Lower Court and hence Notice may be dispensed with)

PRAYER in C.M.A.No.2218 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and Judgment in M.C.O.P.No.1100 of 2004 dated 22.12.2009, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

PRAYER in C.M.A.No.2219 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and Judgment in M.C.O.P.No.1102 of 2004 dated 22.12.2009, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

PRAYER in C.M.A.No.2220 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and Judgment in M.C.O.P.No.1103 of 2004 dated 22.12.2009, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

For Appellant in: Mrs.C.Harini for M/s.M.B.Gopalan
all the C.M.As.

For Respondents : Mr.S.Kalyanaraman for R1
in all C.M.As. R2 & R3 - Ex-parte before the tribunal
R4- No appearance

COMMON JUDGMENT

The appellant in all these appeals is the Branch Manager, Oriental Insurance Company Limited and they questioned their liability to pay compensation amount to the claimants. The claimants in all the appeals filed M.C.O.P.Nos.1100, 1102 and 1103 of 2004 before the Chief Judicial Magistrate Court, Namakkal under Section 166 of the Motor Vehicles Act, 1988, seeking compensation for the injuries sustained by them in a road accident that took place on 01.06.2004.

2.The brief case of the claimants is as follows:

On 01.06.2004, the claimants were travelling in an ambassador Car bearing Registration No. TAH 2367 belonging to the second respondent in all the appeals on Thiruchenkodu - Namakkal road. When they were nearing Sivankadu, a bus bearing Registration No. TN 27 N 1450 belonging to the Tamil Nadu State Transport Corporation hit the car, as a result of which, all the claimants sustained injuries.

3.According to the claimants, the rash and negligent driving of the driver of the bus bearing Registration No. TN 27 N 1450 belonging to the Tamil Nadu State Transport Corporation was the cause of the accident and that therefore, they should pay compensation to them.

4.The owner of the ambassador Car bearing Registration No. TAH 2367 did not appear before the tribunal and therefore, he was set ex-parte. The Oriental Insurance Company Limited and the Tamil Nadu State Transport Corporation filed their respective counters and contested the above said claim petitions.

5.The learned Judge, Motor Accidents Claims Tribunal, after analysing the evidence on record, awarded a compensation of Rs. 62,500/- in M.C.O.P.No.1100 of 2004, Rs.36,200/- in M.C.O.P.No.1102 of 2004 and Rs.35,000/- in M.C.O.P.No.1103 of 2004. Since the driver of the car was also found responsible for the accident, the tribunal after fixing the negligence in the ratio 50 : 50, directed the insurer of the car, the Oriental Insurance Company Limited to pay 80% of the compensation to the claimants and the remaining 20% of the compensation was directed to be paid by the Tamil Nadu State Transport Corporation

Limited.

6.Aggrieved over the orders passed by the tribunal, the Oriental Insurance Company Limited, the second respondent in all the M.C.O.Ps. has filed the present appeals contending that since the injured persons were gratuitous passengers, the Insurance Company is not liable to pay any compensation to the claimants.

7.Mrs.C.Harini, learned counsel appearing for the appellant would contend that since the Insurance Company had issued only an “Act Policy”, the occupants of the car bearing Registration No. TAH 2367 are not entitled to get any compensation from the Insurance Company. In the instant case, the tribunal has not discussed anything about the policy of the Insurance (Ex.R1).

8.The learned counsel appearing for the appellant relied on the decision of the 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 her, no premium was paid for gratuitous passengers/occupants and that the policy covers only the third party risk. She therefore contended that the tribunal was wrong in fastening liability on the insurance company.

9.Per contra, Mr.S.Kalyanaraman, learned counsel appearing for the claimants would contend that as far as the present appeals are concerned, three vehicles were involved and that a lorry was going ahead of the State Transport Corporation bus on the same road and since the driver of the lorry applied sudden brakes without any signal, the driver of the bus hit the lorry and therefore, the car bearing Registration No. TAH 2367, which was coming behind the bus hit the bus bearing Registration No. TN 27 N 1450.

10. A perusal of the FIR (Ex. P1) shows that only the driver of the car bearing Registration No.TAH 2367 was the wrong doer. The Sub - Inspector of Police, Elachipalayam Police Station, after investigation laid a charge sheet, a copy of which is marked as Ex.P5, against the driver of the car bearing Registration No. TAH 2367. The involvement of a lorry is not shown either in the FIR (Ex.P1) or in the final report (Ex.P5). The driver of the bus bearing Registration No.TN 27 N 1450 belonging to the Tamil Nadu State Transport Corporation Limited had infact lodged the complaint with the Sub-Inspector of Police, Elachipalayam Police Station immediately after the accident, which culminated into the registration of FIR (Ex.P1), and he has not stated anything about the involvement of a lorry

in the accident, which was allegedly proceeding ahead of the State Transport Corporation bus on the same road.

11.The Tribunal after considering the evidence of record, has fixed 80% liability on the driver of the car bearing Registration No.TAH 2367 and 20% on the Tamil Nadu Government Transport Corporation. The observations made by the learned tribunal cannot be faulted with in this regard.

12.While deciding the claim petition under Motor Vehicles Act, 1988, the tribunal should examine the terms of the policy produced by the insurer and in the event of denial of liability, a 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, though the Insurance Company has taken a specific plea that they are not liable to pay any compensation to the claimants, since the policy of the Insurance is only an "Act Policy".

13.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 that 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.

14.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 package policy" and provides for liability to third parties, the insurance company is liable to indemnify the insured in the event of an accident caused by or arising out of the use of the motor car.

15.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 an 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).

16.In the instant case, the specific contention of the insurance company is that the Insurance Policy is an "Act policy" and therefore, the same would not cover 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 a pillion rider in a scooter and hence the insurance company is not liable to pay compensation.

17.The Insurance Company has not questioned the quantum of compensation in all these appeals. Therefore, the quantum of compensation awarded by the tribunal is upheld. However, the owner of the ambassador car bearing Registration No. TAH 2367 is liable to pay 80% of the compensation awarded to the claimants together with interest at the rate of 7.5% from the date of the claim petition till the date of deposit within four weeks from the date of receipt of a copy of this order. It is brought to the notice of this Court that the Insurance Company had deposited their share of 80% of the compensation amount as directed by the tribunal. The Insurance Company is entitled to withdraw the same.

18.In the result,

(i)The Civil Miscellaneous Appeals are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(ii)The quantum of compensation awarded by the tribunal is upheld. The second respondent, the owner of the ambassador car is directed to deposit 80% of the total award amount of Rs.62,500/-, Rs.36,200/- and Rs.35,000/- together with interest at the rate of 7.5% per annum to the credit of M.C.O.P.Nos.1100, 1102 and 1103 of 2004 respectively within a period of four weeks from the date of receipt of a copy of this order.

(iii)On such deposit being made, the claimants in all the appeals are entitled to withdraw the same after following due procedure of law.

(iv) 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

//True copy//

Sub Assistant Registrar

vkr/mbi

To

1. Motor Accidents Claims Tribunal,
   Chief Judicial Magistrate Court,
   Namakkal

2. The Section Officer, VR Section,
   High Court, Madras (2 Copies)

+2ccs to Mr.M.B.Gopalan, Advocate SR.No.89876,89875

+2ccs to Mr.S.Kalyanaraman, Advocate SR.No.17,18

C.M.A.Nos.2218, 2219
and 2220 of 2011 and
M.P.No.1 of 2011 in
C.M.A.No.2218 of 2011 and
M.P.No.1 of 2011 in
C.M.A.No.2219 of 2011 and
M.P.No.1 of 2011 in
C.M.A.No.2220 of 2011

RSI(CO)
GMY(12/03/2019)