IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.555 of 2016
and C.M.P.No.4613 of 2016

The New India Assurance Co., Ltd.,
Micro Office
No.287, R.K.Tower, First Floor,
Opp. to Balaji Theatre,
Vellore-Chithoor Main Road,
Katpadi, Vellore - 7. .... Appellant / Respondent

Vs.

1. Latha
2. Krithika (Minor)
3. Naveen Kumar (Minor) .... Respondents / Petitioners
Minor repondents 2 & 3
represented by their Mother and
natural Guardian the 1st respondent
herein)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree, dated 16.11.2015 made in M.C.O.P.No.58 of 2013 on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Court), Vellore, Vellore District.

For Appellant : Mr.R.Sivakumar
For Respondents : Mr.M.Santhanaraman

JUDGMENT

(Judgement of the Court was delivered by P.KALAIYARASAN, J)

This Civil Miscellaneous Appeal has been filed against the award passed by the Motor Accident Claims Tribunal (I Additional District and Sessions Court), Vellore, dated 16.11.2015 in M.C.O.P.No.58 of 2013 at the instance of the Insurance Company Ltd., as appellant.

2. The legal heirs of the deceased Sundaramoorthi claim compensation under Section 166 of the Motor Vehicles Act r/w Rule 3(1) of TNMACT Rules 1989, as the deceased while riding his

two wheeler met with an accident resulting to death by hitting on the parapet wall of a bridge and fell down from a height of 20 feet. The appellant / insurance company took a stand that since the deceased being owner of the vehicle himself had died due to his own negligence, the insurance company is not liable to pay compensation to the petitioners.

3. The Tribunal after analysing oral and documentary evidence of both sides, awarded compensation of Rs.14,31,000/-. Aggrieved by the same, the insurance company has preferred this Civil Miscellaneous Appeal.

4. The learned counsel appearing for the appellant argued that the deceased being owner of the vehicle died due to his own negligence and hence his heirs are entitled to limited compensation as the policy is a package policy with compulsory Personal Accident cover.

5. The learned counsel appearing for the respondents per contra contends that since the policy is a package policy / comprehensive policy, legal heirs of the deceased owner is entitled to the compensation as claimed by the petitioners.

6. The fact remains that the accident occurred only due to negligence on the part of the deceased as he hit the parapet wall of the bridge by talking over a cellphone and riding the vehicle in single hand, as spoken to by the pillion rider, who has also lodged the FIR, examined as R.W.1. The photostat copy of the insurance policy is marked as Ex.P.2. This Court perused the said copy of the policy. The policy-cum-certificate of insurance is two wheeler package policy including compulsory Personal Accident cover for owner and driver.

7. The only point that revolves in this appeal is whether liability covered under the said policy is for unlimited amount or limited to as per the terms of the special contract entered into between the insurer and the insured under the policy.

8. The Hon'ble Supreme Court in Bhagyalakshmi and others v. United Insurance Company Ltd., and another reported in (2009) 7 SCC 148 held that package policy / comprehensive policy covers the pillion rider and the occupants of the car and the owner who was also occupant (not driving at that time) is entitled to compensation as per the terms of the policy placed in that case. The matter was then referred to the Larger Bench to decide as to what would be the liability of the insurer if the policy is a "comprehensive / package policy".

9. The above decision in Bhagyalakshmi's case (cited supra) was rendered by the Hon'ble Supreme Court on 06.05.2009. In a subsequent decision rendered on 20.11.2012, the Hon'ble Supreme

Court in National Insurance Co., Ltd., v. Balakrishnan reported in (2013) 1 SCC 731, has held as follows :

> "26. 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 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 Bhagyalakshmi [(2009) 7 SCC 148 : (2009) 3 SCC (Civ) 87 : (2009) 3 SCC (Cri) 321] 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 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."

10. The learned counsel appearing for the appellant cited the Hon'ble Supreme Court Judgment in Oriental Insurance Co., Ltd., v Rajini Devi, reported in 2008 ACJ 1441 and contended that the insurance company is liable to pay only the agreed sum of Rs.1,00,000/- to the claimants, as per the policy. In the above ruling, it has been held as follows :

> "6. It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof."

11. The coverage for third party is statutory as per Section 146 of the Motor Vehicles Act, 1988. Personal Accident cover to the owner by paying additional premium is purely contractual and non-statutory. The insurance company is liable to pay only to the extent as agreed under the contract.

12. As per the terms of the policy, Personal Accident claim to the owner is limited to Rs.1,00,000/- for the two wheeler. Therefore as per the contract, the claimants are entitled to get compensation of Rs.1,00,000/- from the insurance company. For the aforesaid reasons, the award of the Tribunal is liable to be modified by awarding a total compensation of Rs.1,00,000/- to the claimants.

In the result, this Civil Miscellaneous Appeal is partly allowed and the appellant / respondent is directed to pay a total compensation of Rs.1,00,000/- (Rupees One lakh only) along with the accrued interest at the rate of 7.5% p.a., to the respondents / claimants, within two months from the date of receipt of a copy of this order. The appellant / insurance company is permited to withdraw the balance amount lying in the credit of the M.C.O.P.No.58 of 2013 on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Court), Vellore, Vellore District. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

tsvn

To

1.The Motor Accident Claims Tribunal /
I Additional District and Sessions Court,
Vellore.

2.The Section Officer
VR Section
High Court, Madras-104

+1 cc to Mr.R.Sivakumar Advocate sr 12729

kgk(co)
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