IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on 3.9.2018 | Delivered on 27.09.2018 |
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.1150 OF 2017

1 NATIONAL INSURANCE CO LTD
GOVINDASAMPILLAI STREET
NEAR OLD BUS STAND,
SALEM-1. ... APPELLANT/5TH RESPONDENT

Vs

1 KARUPPIAH
2 ARUNA
3 SUGANYA
4 SAJAN ... 1 TO 4 RESPONDENT/ CLAIMANTS
5 KARUPPIAH
6 ARUNA
7 SUGANYA
8 SAJAN ... 5 TO 8 RESPONDENT/ RESPONDENTS 1 TO 4

PRAYER: Civil Miscellaneous Appeal filed against the award and decree dated 9.6.2016 in MCOP NO 736 OF 2005 on the file of the Motor Accident Claims Tribunal, (Spl. District Court) Salem.

For appellant : Mr.D.Bhaskaran

For respondents 1 to 4 : Mr.M.R.Thangavel

For 5$^{th}$ respondent : No appearance

J U D G M E N T

K.K.SASIDHARAN, J.

The contract of insurance being covered by qua contract, whether the Insurance Company is liable to pay the compensation to the owner of the vehicle who died in an accident while driving the insured vehicle, is the core issue that arises for consideration in this Civil Miscellaneous Appeal.

Brief facts:-

2. The vehicle bearing registration No.TN 30A 1121, owned by Thiru.Gopi @ Gopu, who was a resident of Venkatesapuram, Salem, was involved in a motor accident. The insured, who was travelling in the said car, died in the accident. The legal heirs filed a claim petition before the Motor Accident Claims Tribunal, Salem, in MCOP No.736 of 2005, claiming compensation of Rs.25 Lakhs on the ground that the driver of the car was negligent and as such, the Insurance Company is liable to pay compensation. The claim was entertained by the Tribunal, resulting in passing a award for a sum of Rs.10,15,000/-. The decree dated 9.6.2016 is under challenge at the instance of the National Insurance company Ltd., primarily on the ground that the statutory liability of the insurer is only to the extent of indemnification of the insured against third party or in respect of damages and it would not indemnify the insured for his own death in the accident.

3. We have heard the learned counsel for the appellant. We have also heard the learned counsel for the claimants.

Analysis:-

4. The respondents 1 to 4 filed a claim petition in MCOP No.736 of 2005 before the Motor Accident Claims Tribunal, claiming compensation on account of the death of Thiru.Gopi @ Gopu, who died in a road accident involving his own vehicle, which was insured with the appellant. The claimants, while filing the petition for compensation, had shown them as respondents, also being the legal representatives of the insured, who died in the accident.

5. The question that arises for consideration is as to whether the insurer is liable to pay compensation to the legal representatives of the owner of the vehicle who died in the accident involving the vehicle insured with the Insurance Company.

6. The legal question raised by the appellant is no longer res integra in view of the string of decisions of the Hon'ble Supreme Court.

7 (a) The Hon'ble Supreme Court in Oriental Insurance Company Ltd. vs. Rajni Devi and others, (2008(5) SCC 736) considered the question as to whether Section 147 of the Motor Vehicles Act mandates the Insurance Company to assume the risk for death or bodily injury to the owner of the vehicle.

(b) The Hon'ble Supreme Court held that the liability on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. The Supreme Court was of the view that the matter which is in the realm of contract and there being no provision in the contract for indemnifying the owner for his own death, such a claim by the legal representatives of the deceased owner is not maintainable.

8. The Hon'ble Supreme Court in Oriental Insurance Company vs. Jhuma Saha and others, 2007(9) SCC 263, held that unless there is a clear statement in the policy covering any risk for the owner himself, the Insurance Company is not liable to pay compensation on account of the death of the insured.

9. The Hon'ble Supreme Court in Dhanraj vs. New India Assurance Co., Ltd. and anr., (2004 (8) SCC 553), held that an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. According to the Supreme Court, Section 147 does not require an insurance company to assume the risk for death or bodily injury to the owner of the vehicle.

10. The legal position is therefore very clear that there is no contractual liability on the part of the Insurance Company to indemnify the legal representatives of the insured on account of his death.

11. It is not the case of the claimants that additional premium was paid to cover the insured. The policy was an act policy, indemnifying only the third parties.

12. The legal position was not taken note of by the learned Tribunal while negativing the plea taken by the Insurance Company. We are therefore of the view that the appellant must succeed.

13. The Judgment and Decree dated 9.6.2016 on the file of the Motor Accident Claims Tribunal, (Spl. District Court) Salem, is set aside. The Claim petition in MCOP No.736 OF 2005 is dismissed. The Insurance Company is permitted to withdraw the amount lying on the credit of M.C.O.P.No.736 of 2005, on the file of the Motor Accident Claims Tribunal, (Spl. District Court) Salem.

14. In the upshot, we allow the Civil Miscellaneous Appeal. There is no order as to costs. Consequently, C.M.P.Nos.5697 of 2017 and 9939 of 2018 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal, (Spl. District Court) Salem.

+1 cc to Mr.D.Bhaskaran, Advocate Sr.No.66980
+1 cc to Mr.C.Anbu, Advocate Sr.No.66927

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P.D. Judgment in
C.M.A.No.1150 OF 2017

PVS(CO)
CSL/28.03.2019