IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.10.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.2419 of 2007

The New India Assurance Company Ltd.,
514-515, Gandhi Road,
Kancheepuram.
...Appellant/2nd Respondent

.Vs.

1.C.Sekar

2.S.Nirmala ...Respondents 1 & 2/Petitioners

3.R.Kasthuri
...3rd Respondent/1st Respondent
(R3-set exparte in the lower court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 20.12.2005 in M.C.O.P.No.323 of 2001 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kancheepuram.

Appellant : Mrs.R.Sreevidhya

R1 & R2 : Mr.Veerasamy

R3 : No exparte

JUDGMENT

The appellant the New India Assurance Company Limited is the second respondent in M.C.O.P.No.323 of 2001 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kancheepuram. The respondents 1 & 2 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.2,00,000/- for the death of their son Rajkamal, aged 17 years, in a road accident on 18.02.2001.

2. The case of the claimants in nutshell is as follows:
On 18.02.2001, the deceased Rajkamal was travelling in an Ambassador Car bearing Registration No. TMT 4799 along Anna Salai. The driver of the car drove the vehicle rashly and

negligently and hit a van bearing Registration No. TN 25 H 6786 which was coming on the opposite direction as a result whereof, the deceased sustained fatal injuries and died on the spot.

3. According to the claimants, the rash and negligent driving of the driver of the car bearing Registration No. TMT 4799 belonging to the third respondent was the cause of the accident and that since the said car was insured with the appellant / New India Assurance Company Limited, the owner of the car and the insurer are jointly and severally liable to pay compensation.

4. The third respondent / owner of the car remained absent before the Tribunal and therefore, she was set ex-parte. The appellant / New India Assurance Company Limited contested the claim petition on all the grounds available to the insurer. The learned Subordinate Judge / Motor Accident Claims Tribunal, Kancheepuram after analysing the evidence on record, awarded a compensation of Rs.1,72,000/- together with interest at the rate of 7.5% per annum. Aggrieved over the orders passed by the Tribunal, the appellant / New India Assurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mrs.R.Sreevidhya, learned counsel appearing for the appellant / New India Assurance Company Ltd. would contend that though they have taken a specific stand in their counter that the Insurance Policy issued is only an "Act Policy", and would not cover the inmates of the car, the Tribunal had directed the Insurance Company to pay compensation to the claimants. She 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 her, no premium was paid for gratuitous passenger/occupant of the car 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.

6. Per contra, Mr.Veerasamy, learned counsel appearing for the respondents 1 & 2 /claimants would contend that since the deceased was travelling in a private car, he 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.

7. While deciding the claim petition under Motor Vehicles Act, 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 is an " Act Policy " or " Package Policy". In the instant case, the Tribunal has not given any definite findings in this regard.

8. 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.

9. 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.

10. 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.

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).

11. The specific contention of the insurance company is that the insurance policy issued to the car belonging to the third respondent is only an " Act policy" which would not be covered for the inmates of the car. A perusal of the insurance policy, filed along with this appeal 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.

12. Though the appellant/insurance company has questioned the quantum of compensation amount, the claimants/respondents 1 and 2 have 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.

13. In the result,

(i) The appeal is allowed. No costs.

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

(iii) The third respondent/owner of the Ambassador car is directed to deposit the entire compensation of Rs.1,72,000/- 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, the respondents 1 & 2 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

(v) The orders passed by the Tribunal fastening liability on the Insurance Company is set aside.

(vi) 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/-
Asst.Registrar (CS V )

/true copy/
Sub Asst. Registrar

mtl

To

1.The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Kancheepuram.

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

+1 cc to M/s.R.Sreevidhya Advocate sr90066

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