IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.1460 of 2008

The New India Assurance Company Limited,
No.1, Bharathi Road,
Arcot Woodlands Building,
Cuddalore. ... Appellant /2nd Respondent

Vs.

1. S.Durairaj
2. R.Balasubramanian ... Respondent /Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders dated 08.01.2008 passed in M.C.O.P.No.1425 of 2005 by the II Additional Subordinate Judge, Motor Accident Claims Tribunal, Cuddalore.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : No appearance

J U D G M E N T

The appellant, the New India Assurance Company Limited, Cuddalore, who is the 2nd respondent in MCOP No.1425 of 2005 on the file of the II Additional Subordinate Judge, Motor Accident Claims Tribunal, Cuddalore has filed the present appeal questioning their liability to pay compensation awarded by tribunal to the claimant.

2. The first respondent/claimant filed the above claim petition seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 05.02.2004. The case of the claimant is that, when he was travelling in a two wheeler bearing registration No.PY-01-S-9928 as a pillion rider on Pondy-Tindivanam Main Road, at about 3.30 p.m., the rider of the two wheeler rode the vehicle rashly and negligently, as a result of which, the claimant fell down from the vehicle and sustained injuries all over his body. According to the claimant, the rash and negligent riding of the

rider of the two wheeler was the cause of the accident and that since the owner of the vehicle, the 2nd respondent herein, insured his two-wheeler with the present appellant, both of them are jointly and severally liable to pay compensation to him.

3. The owner of the two wheeler remained absent before the tribunal and therefore he was set exparte. The insurance company, the present appellant contested the claim petition.

4. The II Additional Subordinate Judge, Motor Accident Claims Tribunal, Cuddalore, after analysing the evidence on record, awarded a compensation of Rs.1,35,800/- to the claimant together with interest at the rate of 7.5% per annum.

5. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant contended that the insurance policy is an "Act policy" and therefore, the pillion rider is not entitled to get compensation from the insurance company. He would further contend that the tribunal had wrongly held that since the seating capacity in a two wheeler is two and the rider of the motorcycle also had a valid license, the insurance company is liable to pay compensation to the claimant. His specific contention is that since the vehicle was having only a third party insurance (Act Policy), the insurance company cannot held liable to pay compensation to the pillion rider.

6. He also relied on a decision of a 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 pillion rider of a two wheeler cannot be termed as a third party, especially, when the two wheeler had only " Act Policy" and not " Comprehensive Policy". According to him, no premium was paid for the pillion rider 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.

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, 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.

8. In the decision of a 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 alone covers the risk of the occupants also and therefore, the insurance company cannot escape from its liability to pay compensation.

9. 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).

10. In the instant case, the specific contention of the insurance company is that in an " Act policy" a pillion rider would not be covered and that 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. This contention is acceptable in the light of the decisions cited above.

11. The appellant has not questioned the quantum of compensation. 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.

12. In the result,

(i) The appeal is allowed. No costs.

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

(iii) The second respondent/owner of the two wheeler is directed to deposit the entire compensation of Rs.1,35,800/- 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 two wheeler, 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

//True Copy//

Sub Assistant Registrar

mst

To

The II Additional Subordinate Judge,
Motor Accident Claims Tribunal, Cuddalore.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.77142

CMA.No.1460 of 2008

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srg 12/02/2020