IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 25.01.2019

DELIVERED ON 31.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.1689 of 2008

United India Insurance Company Limited,
Third Party Motor Claims Cell,
No.38, Anna Salai, Chennai-02.
... Appellant/ 2nd respondent

Vs.

1. Babuji ... 1st respondent/ Claimant

2. Dhanalakshmma ... 2nd respondent/1st respondent

PRAYER

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders dated 27.09.2005 passed by the Motor Vehicle Accidents Claims Tribunal, Sub Court, Ponneri in MCOP No.436 of 2004

For Appellant : Mr.D.Bhaskaran

For first Respondent: Mr.N.R.Anandha Ramakrishnan

For 2nd respondent : No appearance

J U D G M E N T

The United India Insurance Company Limited, Chennai, the second respondent in MCOP No.436 of 2004 on the file of the Motor Accident Claims Tribunal, Ponneri have filed the present appeal questioning their liability to pay compensation to the first respondent/claimant.

2. The first respondent/claimant filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.8,46,000/- for the injuries sustained by him in a road accident that took place on 08.09.2003, when he was travelling as a passenger in a Tata Sumo car bearing registration No.AP-26-E-7259, belonging to the second

respondent and insured with the present appellant. According to the claimant, when the car was nearing a Salt Factory at Tada, the driver drove the vehicle rashly and negligently, as a result of which, it toppled and the claimant sustained injuries all over his body. The further contention of the first respondent/claimant is that the rash and negligent driving of the driver of the Tata Sumo Car, belonging to the second respondent was the cause of accident and that since sine the said car was insured with the present appellant, both of them are jointly and severally liable to pay compensation to him.

3. The first respondent, owner of the Tata Sumo Car bearing registration No.AP-26-E-7259 remained absent before the tribunal and therefore, she was set exparte. The present appellant, United India Insurance Company Limited contested the claim petition.

4. The Motor Accident Claims Tribunal, Ponneri, after analysing the evidence on record, awarded a compensation of Rs.3,20,000/- together with interest at the rate of 9% per annum to the claimant. Aggrieved over the orders passed by the tribunal, the United India Insurance Company Limited has filed the present appeal.

5. Mr.D.Baskaran, learned counsel appearing for the appellant would contend that since the first respondent/claimant travelled in the Tata Sumo Car bearing registration No.AP-26-E-7259 as a gratuitous passenger, the insurance company cannot be held liable to pay compensation to him. He would further contend that since the insurance company had issued only an "Act Policy" , the occupant of the car is not entitled to get any compensation from the insurance company. He relied on the following decisions in

(i) Oriental Insurance Company Limited Vs. Surendra Nath Loomba and others reported in 2012(2) TN MAC 650 (SC)

(ii) New India Assurance Company Limited Vs. S.Krishnasamy and others reported in 2015(1) TNMAC 19 (D.B)

(iii) National Insurance Company Limited Vs. Balakrishnan and another reported in 2012(2) TNMAC 637 (SC)

(iv) Oriental Insurance Company Limited Vs. Sudhakaran K.V. and others reported in 2008(7) Supreme Court Cases 428

(v) United India Insurance Company Limited, Shimla Versus Tilak Singh and others reported in CDJ 2006 SC 298 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". His specific contention is that, no premium was paid for gratuitous passenger/occupant of the car and that the policy covers only the third party risk. He would therefore contend that the tribunal was wrong in fastening liability on the insurance company.

6. Per contra, Mr.N.R.Anandha Ramakrishnan, learned counsel appearing for the first respondent/claimant would contend that though the policy of insurance is an "Act Policy", the insurance company should be directed to pay compensation to the claimant in the first instance and then recover the same from the owner of the vehicle. Reliance was placed upon the following decisions in

(i) United India Insurance Company Limited, Tadepalligudem, West Godavari District Vs. N.Appi Reddy and others reported in 2013 ACJ 545.
(ii) The Manager, New India Assurance Company Limited, Arni Vs. R.Senthamarai and 6 others reported in 2011(2)TNMAC 625.
(iii) United India Insurance Company Limited Vs. Labanyabati Dev and others reported in 2012 ACJ 2451.

It is pertinent to point out that though the tribunal had held that the driver of the Tata Sumo Car bearing registration No.AP-26-E-7259 was responsible for the accident, did not give a definite finding with regard to the nature of the policy.

7. While deciding the claim petition under Motor Vehicle 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 iss " 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 is 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. 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).

11. In the instant case, the specific contention of the insurance company is that in an " Act policy" the insurance company is not liable to pay compensation for the death or bodily injuries suffered by the inmates of the car. A perusal of the insurance policy (Ex.P8) clearly shows that it is 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. No arguments were advanced with regard to quantum of compensation awarded by the tribunal. The compensation awarded by the tribunal also seems to be very reasonable. Therefore, I do not see any reason to upset the quantum of compensation awarded 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 second respondent/owner of the Tata Sumo Car is directed to deposit the entire compensation of Rs.3,20,200/- along with interest at the rate of 9% 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 Tata Sumo car, 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(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. Motor Vehicle Accidents Claims Tribunal,
Sub Court, Ponneri.

2. United India Insurance Company Limited,
Third Party Motor Claims Cell,
No.38, Anna Salai, Chennai-02.

3. Dhanalakshamma, w/o Athiseshaiya, No.20/110,
Pattiraju Street, Mulapet, Nellore District,
Andrapradesh State.

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

+1cc to M/S.D.Bhaskaran, Advocate SR.8059
+1cc to M/S.N.R.Anantharamakrishnan, Sr.8611

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ak[co]
srg 02/05/2019