IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.01.2019
CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.2636 of 2008
and M.P.No.1 of 2008

The Branch Manager,
M/s.United India Insurance
Company Limited,
Perambalur.

... Appellant/4th respondent

..Vs..

1.Ramalingam ... 1st Respondent/Claimant

2.Kumar
3.The Branch Manager,
M/s.Oriental Insurance
Company Limited No.3217,
East Main Road,
Pudukottai.

4.Alavanthan
(R2-Exparte in the lower Court)

...Respondents to 2 to 4/Respondents 1 to 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 30.11.2006 made in M.C.O.P.No.93 of 2005 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Perambalur.

For Appellant : Mr.D.Bhaskaran

For Respondents: Mr.S.Arunkumar for R3
Mr.A.A.Venkatesan for R4
R1 - No Appearance

JUDGMENT

The appellant United India Insurance Company Limited, the fourth respondent in M.C.O.P.No.93 of 2005 on the file of the Chief Judicial Magistrate, Perambalur has filed the present appeal under Section 173 of the Motor Vehicles Act 1988, questioning their liability to pay compensation to the first respondent/claimant.

2.The brief case of the first respondent/claimant in M.C.O.P.No.93 of 2005 is as follows:

The first respondent/claimant was a pillion rider in the two wheeler bearing Registration No.TN 46 - B - 3035 ridden by his friend one Mr.Selvam and they were proceeding towards Alanthur Santhi Stone Crusher on 28.12.2004. At about 10.30 a.m., a speeding Auto bearing Registration No.TN 46 - C - 5665 belonging to the second respondent and insured with the third respondent hit the two wheeler bearing Registration No.TN 46 - B - 3035, as a result of which, the first respondent/claimant sustained injuries all over his body.

3.According to the first respondent/claimant, the rash and negligent driving of the driver of the Auto bearing Registration No.TN 46 - C - 5665 was the cause of the accident and that since the said Auto was insured with the third respondent, the Oriental Insurance Company Limited both of them are jointly and severally liable to pay the compensation to him.

4.In the claim petition, it is further contended by the first respondent/claimant, that the fourth respondent is the owner of the motor cycle bearing Registration No.TN 46 - B - 3035 in which he was a pillion rider and that the said vehicle was insured with the present appellant. Therefore, he contended that the respondents 2 to 4 and the present appellant are jointly and severally liable to pay the compensation of Rs.4,00,000/-.

5.The second respondent remained absent before the tribunal and therefore he was set ex-parte. The other respondents contested the claim petition. The tribunal after analysing the evidence on record, fixed the negligence on the part of the rider of the two wheeler bearing Registration No.TN 46 - B - 3035 and directed the owner of the two wheeler as well as the present appellant to pay compensation of Rs.98,000/- together with interest at the rate of 9% p.a jointly and severally.

6.Aggrieved over the said orders passed by the tribunal, the United India Insurance Company Limited, Perambalur have filed the present appeal.

7.Mr.D.Bhaskaran, learned counsel appearing for the appellant would contend that since the Insurance Company had issued only an act policy, the pillion rider of the two wheeler bearing Registration No.TN 46 - B - 3035 is not entitled to get any compensation from the Insurance Company. He would further contend that the tribunal has not discussed anything about the policy of Insurance (Ex.P7). He also relied on the decision of Division Bench of this Court in New India Insurance Company Limited -vs- S.Krishnasamy reported in 2015(1) TNMAC 19(DB) and contended that the pillion rider of the two wheeler cannot be termed as the third party, especially, when the two wheeler had only an "Act Policy" and not "Comprehensive Policy". According to him, no premium was paid for gratuitous passengers/occupant 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.

8.In the instant case, though, F.I.R was registered against the driver of the Auto bearing Registration No.TN 46 – C – 5665, the tribunal based on the evidence adduced on both sides have categorically held that the rider of the two wheeler was responsible for the accident. The claimant and the owner of the two wheeler did not file any appeal or cross objections against the orders passed by the tribunal.

9.A perusal of the orders passed by the tribunal clearly shows that the tribunal has taken into consideration all aspects before fixing the negligence on the part of the driver of the two wheeler and all the observations made by the tribunal are unassailable. While deciding the claim petition in the 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 was "Act Policy" or "Comprehensive Policy". In the instant case, the tribunal has not given any definite findings in this regard, though the Insurance Company has taken a specific plea that they are not liable to pay any compensation to the claimant, since the policy of Insurance is only an "Act Policy". The decision of Division Bench of this Court in Royal Sundaram Alliance Insurance Company Limited V.A.Meenakshi reported in 2009(1) TNMAC 249,

> "13.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 an 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).

14.In the instant case, the specific contention of the insurance company is that the Insurance Policy is an "Act policy" and therefore, the same would not cover the inmates of the car. A perusal of the insurance policy (Ex.R1) 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 a pillion rider in a scooter and hence the insurance company is not liable to pay compensation."

In Sagar Chand Phool Chand Jain vs. Santosh Gupta reported in 1985 ACJ 585,

"15.Though the appellant/Insurance Company has questioned the quantum of compensation amount, the claimant/first respondent has not filed any appeal or cross objection against the quantum of compensation awarded by the tribunal."

In the instant case, the specific contention of the Insurance Company is that the Insurance Policy is an "Act Policy" and therefore the same would not cover the pillion rider of the two wheeler.

10.A perusal of the Insurance Policy (Ex.P7) clearly shows that it is an "Act Policy" and only comprehensive policy/package policy would cover the liability of pillion rider of the two wheeler and hence the Insurance Company is not liable to pay any compensation. The Insurance Company has not questioned the quantum of compensation in the present appeal and no arguments were advanced in this regard. Therefore, only the owner of the two wheeler bearing Registration No.TN 46 - B - 3035 is liable to pay the compensation awarded to the claimant together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order. It is brought to the notice of this Court that the Insurance Company had deposited 50% of compensation amount as directed by the tribunal, the Insurance Company is entitled to withdraw the same.

11.In the result,

(i)The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connection Miscellaneous Petition is closed.

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

(iii)The fourth respondent, the owner of the two wheeler bearing Registration No.TN 46 - B - 3035 is directed to deposit the entire compensation amount together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.93 of 2005 dated 30.11.2006 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Perambalur within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the first respondent/claimant is entitled to withdraw the same after following due procedure of law.

(iv)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 III)

//True Copy//

Sub Assistant Registrar

rna

To

The Chief Judicial Magistrate,
Perambalur.

+1cc to Mr.A.A.Venkatesan, Advocate sr.no.325
+1cc to Mr.D.Bhaskaran, Advocate sr.no.769

C.M.A.No.2636 of 2008
and M.P.No.1 of 2008

nr 02/05/2019