IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.NO.1006 OF 2009

The Branch Manager,
National Insurance Co. Ltd.,
Branch Office, Anuradha Complex, III Floor,
No.333, Bangalore Road,
Krishnagiri Town & District.

...Appellant/2nd Respondent

.Vs.

1.Jaya
2.C.Venu

...Respondents/Petitioner/
1st Respondent

PRAYER:
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 31.01.2008 in M.C.O.P.No.932 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court No.2, Krishnagiri.

For Appellant : Mr.S.Vadivel

For Respondents : No appearance

JUDGMENT

The appellant, National Insurance Company Limited, is the second respondent in M.C.O.P.No.932 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court No.2, Krishnagiri. The first respondent filed the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.7,00,000/- for the injuries sustained by her in a road accident on 23.08.2004.

2. The case of the claimant is that on 23.08.2004, she was travelling as a pillion rider in TVS Suzuki motorcycle bearing Registration No. TSF 4452 ridden by her husband on Krishnagiri – Hosur Road and at about 08.30 a.m, the claimants' husband

suddenly applied brakes, as a result of which, she fell down and sustained injuries all over her body. She also sustained head injury and an operation was performed on her brain.

3. According to the claimant, the TVS Suzuki motorcycle bearing Registration No. TSF 4452 belonged to her husband and he had insured the vehicle with the present appellant and both of them are jointly and severally liable to pay compensation.

4. The owner of the two wheeler (husband of the claimant) remained absent before the Tribunal and therefore, he was set ex-parte. The appellant contested the claim petition. The learned Motor Accident Claims Tribunal / Chief Judicial Magistrate Court No.2, Krishnagiri after analysing the evidence on record, awarded a compensation of Rs.6,00,000/- together with interest at the rate of 7.5% per annum to the claimant. Aggrieved over the orders passed by the Tribunal, the present appellant, National Insurance Company Limited, has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.S.Vadivel, learned counsel appearing for the appellant contended that since the Insurance Company had issued only an "Act Policy", the pillion rider cannot claim compensation from the Insurance Company and the Tribunal had erroneously fastened liability on the Insurance Company.

6. While deciding the claim petition under Motor Vehicles Act, 1988, 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 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, though the Insurance Company had taken a specific plea that they are not liable to pay any compensation to the claimants, since the policy of the Insurance is only an "Act Policy".

7. 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 and therefore, the insurance company cannot escape from its liability to pay compensation.

8. 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 package policy" 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.

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 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).

10. 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 scooter. A perusal of the Insurance Company (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 scooter and hence the Insurance Company is not liable to pay compensation.

11. The Insurance Company has not questioned the quantum of compensation in the appeal. Therefore, the quantum of compensation awarded by the tribunal is upheld. However, the owner of the motorcycle bearing Registration No. TSF 4452 is liable to pay the compensation awarded by the Tribunal to the claimant together with interest at the rate of 7.5% from the date of the claim petition till the date of deposit within four weeks from the date of receipt of a copy of this order. It is brought to the notice of this Court that the entire amount was deposited by the Insurance Company. The Insurance Company is entitled to withdraw the same.

12. In the result,

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

(ii) The quantum of Compensation awarded by the Tribunal is up held. The second respondent, owner of the two wheeler is directed to deposit the compensation amount of Rs.6,00,000/-

together with interest at the rate of 7.5% per annum to the credit of M.C.O.P.No.932 of 2005 within a period of four weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the claimant is at liberty to withdraw the same as per the orders passed by the Tribunal after following due process 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 V)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Chief Judicial Magistrate Court No.2,
   The Motor Accidents Claims Tribunal,
   Krishnagiri.

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No.86317

CMA.No.1006 of 2009

KK(CO)
CS/15/07/2020