IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 15.02.2019]

[PRONOUNCED ON : 04.04.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1350 of 2011
and
M.P.No.1 of 2011

The Divisional Manager,
The New India Assurance Co. Ltd.,
Divisional Office,
No.1, Bharathi Road,
Cuddalore - 607 001. ... Appellant

.. Vs ..

1. A. Palanivel
2. Mallika
3. Hemavathi
4. Minor Ranjini

(4th respondent minor represented by
guardian next friend A.Palanivel)

5. C.Jayabal
(5th respondent was set ex-parte
before the lower Court) ... Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 30.06.2009 made in M.C.O.P.No.720 of 2006 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Cuddalore.

For Appellant : Mr.A.Salomi
For RR-1 to 4 : Mr.R.Sreedhar
For R-5 : Ex-parte

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JUDGMENT

The Insurance Company is the appellant herein.

2. Respondents 1 to 4 herein/claimants have filed a claim petition in M.C.O.P.No.720 of 2006 before the Motor Accidents Claims Tribunal (Principal District Judge), Cuddalore, alleging that on 16.01.2006 at about 03.15 p.m., while the first and

second claimant's son namely, Rajesh @ Sathishkumar was travelling as a pillion rider on the Aravankoil - Thaikkalthonithurai road at Pachayankuppam, Cuddalore O.T., due to heavy speed, the rider lost control and as a result of which, the rider and the pillion rider (1st claimant's son) fell down from the moped and sustained injuries. The pillion rider sustained fatal injuries and was admitted in the Government Head Quarters Hospital, Cuddalore. Inspite of best treatment, he succumbed to injuries and died on the same day. Post-mortem was also done in the Government Head Quarters Hospital, Cuddalore. Then he was taken home by ambulance where his funeral rites were done. The accident was solely due to the rash and negligent driving of the rider of the TVS moped. The first respondent before the Tribunal is the owner of the offending TVS moped and the second respondent before the Tribunal is its insurer and as such, both are jointly and severally liable to pay compensation to the claimants. For the death of the said Rajesh @ Sathishkumar, claim1ants 1 and 2, who are the parents of the deceased and claimants 3 and 4, who are the sisters of the deceased have filed the claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as compensation.

3. The appellant/insurance company has filed a counter statement alleging that the vehicle of the accused viz., TVS Champ bearing Registration No.TN-31-B-4655 was insured with our insurance company and the insurance policy is 712800/31/05/02/000/00680 at the time of the accident and the said policy is a 'liability only policy' and it does not cover the insurance for the pillion rider of the vehicle. Hence, there is no liability on the part of the appellant/insurance company in respect of the pillion rider and therefore, the insurance company/second respondent in the M.C.O.P. is not at all liable to pay any compensation to the claimants.

4. Before the Tribunal, the first claimant examined himself as P.W.1 and one Mr.Panneerselvem, who is the eye witness, was examined as P.W.2 and documents Exs.P.1 to P.8 were marked on the side of the claimants. On the side of the insurance company, one Mr.S.Viswanathan, Senior Assistant was examined as R.W.1 and document Ex.R.1 was marked.

5. The Tribunal, after considering both oral and documentary evidence adduced on either side, has held that the deceased Rajesh @ Sathishkumar sustained fatal injury in the road accident which occurred on 16.01.2006 involving TVS Moped bearing Registration No.TN-31-B-4655 and the same was happened due to the rash and negligent driving of the driver of the two wheeler owned by the first respondent before the Tribunal and this Court is of the view that in the absence of any contra evidence, the same is hereby confirmed.

6. The Tribunal, based upon Ex.P.5-copy of driving license, has held that the driver of the moped had driving license at the time of the accident. On behalf of the insurance company, the staff of the insurance company was examined as R.W.1 and marked Ex.R.1-insurance policy for the two wheeler bearing Registration No.TN-31-B-4655, wherein, it is stated that it is only an "act only liability policy" and no premium has been paid in respect of any third party.

7. In the decision of the Supreme Court reported in 2006 (Volume III) ACJ 1441 [United India Insurance Co. Ltd., Vs. Tilak Singh and others], the Apex Court has held that for the death of a pillion rider, the insurance company is liable only in case of "comprehensive policy" and not in case of "act only policy" and in the decision reported in (2008) 7 SCC 428 [Oriental Insurance Co. Ltd., Vs. Sudhakaran K.V. & Ors.], at para 25, the Apex Court has held as follows:-

> "25. The law which emerges from the said decisions, is : (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider ; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

8. Considering the above factual position as to the nature of the policy as could be seen from Ex.R.1, the policy being act only policy and no premium has been paid, this Court finds that the deceased was travelled as a pillion rider in the two wheeler which was insured with the appellant/insurance company under the statutory policy (act only) which does not contain any endorsement of payment of additional premium. In view of the above factual position coupled with the legal position as enumerated by the Supreme Court as extracted above, this Court is of the considered view that the finding of the Tribunal that the insurance company is liable to pay compensation is liable to be vacated and accordingly, it is hereby modified to the limited extent, lifting the fastening of liability on the part of the insurance company only and following the ratio laid down in the above judgments of the Apex Court, the liability is fixed upon the owner of the vehicle.

9. After perusing the award, it is seen that the quantum of compensation awarded by the Tribunal under various heads, is found to be just and reasonable and accordingly, the same is hereby confirmed.

10. In the result, the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is hereby modified to the effect that the liability of the insurance company stands exonerated and the appellant/insurance company is not liable to pay any compensation to the claimant and if any amount is already deposited by the insurance company, it is permitted to withdraw the said amount and the quantum of compensation is directed to be paid by the owner of the vehicle. There shall be no order as to costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Principal District Judge,
   Motor Accidents Claims Tribunal,
   Cuddalore.

2. The Section Officer,
   V.R. Section, High Court,
   Madras.

+1 cc to Mr.R.Sreedhar, Advocate, S.R.No.32842

+1 cc to Mr.C.Rameshbabu, Advocate, S.R.No.32791

C.M.A.No.1350 of 2011

KAN(CO)
SSM(04/07/2019)