IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.982 of 2009
and
M.P.No.1 of 2009

Royal Sundaram Alliance Insurance Company,
No.46, Whites Road,
Chennai - 600 014. .. Appellant/2nd Respondent

Vs.

1.R.P.Thirumal ..1st Respondent/Petitioner

2.A.K.Gopal .. 2nd Respondent/1st Respondent

(Second respondent remained exparte before Tribunal NDW)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 14.10.2008 passed in M.C.O.P.No.781 of 2005 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruvallur.

For Appellant : Mrs.Elveera Ravindran

For Respondents : No appearance

J U D G M E N T

The appellant / Royal Sundaram Alliance Insurance Company is the second respondent in M.C.O.P.No.781 of 2005 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruvallur. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.7,00,000/- for the injuries sustained by him in a road accident on 10.04.2005.

2. The case of the claimant is that on 10.04.2005, he was a pillion rider in a motorcycle bearing Registration No. TN 21 E 3454 on Arakonam - Shantipuram road and that as a result of rash and negligent riding of the motorcycle by its rider, he fell down and sustained injuries. His further contention is that the motorcycle belonged to the second respondent and since it was insured with the present appellant / Royal Sundaram Alliance Insurance Company, the owner and insurer are jointly and severally liable to pay compensation.

3. The second respondent / owner of the motorcycle remained absent before the Tribunal and therefore he was set ex-parte. The appellant / Royal Sundaram Alliance Insurance Company, contested the claim petition on all the grounds available to the insured. The learned Subordinate Judge / Motor Accidents Claims Tribunal, Tiruvallur after analysing the evidence on record, awarded a compensation of Rs.4,93,250/- together with interest at the rate of 7.5% per annum to the claimant and directed the appellant / Royal Sundaram Alliance Insurance Company to pay the compensation amount. Aggrieved over by the orders passed by the Tribunal, the appellant / Royal Sundaram Alliance Insurance Company has come out with the present appeal.

4. Mrs.Elveera Ravindran, learned counsel appearing for the appellant / Royal Sundaram Alliance Insurance Company drew the attention of this Court to Section II (i) of the Insurance Policy (Ex.R1), wherein it has been stated thus:

"SECTION II - LIABILITY TO THIRD PARTIES

1.Subject to the limits of the liability as laid down in the Schedule hereto, the Company will indemnify the Insured, in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the Insured shall become legally liable to pay in respect of

(i) death of or bodily injury to any person including occupants carried in the insured vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the Insured.

(ii) Damage to property other than property belonging to the Insured or held in trust or in the custody or control of the Insured."

His contention is that as per Section 147 of the Motor Vehicles Act, 1988, the Insurance Company is not liable to pay compensation in view of the terms of the policy (Ex.R1) and therefore the Tribunal was wrong in fastening the liability on the part of the Insurance Company.

5. In the decision of the Division Bench of this court in Royal Sundaram Alliance Insurance Company Limited Vs. A.Meenakshi reported in 2009(1) TNMAC 249, it is held that a comprehensive/package policy covers the risk of the occupants in a private car and the pillion rider of a two wheeler and therefore, the insurance company cannot escape from its liability to pay compensation. In the instant case, the policy of Insurance is a comprehensive package policy and therefore, the Insurance Company cannot avoid its liability.

6. In the result,

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

(ii) The orders passed by the Tribunal is upheld.

(iii) The appellant / Royal Sundaram Alliance Insurance Company is directed to deposit the compensation awarded by the Tribunal i.e., Rs.4,93,250/- (less the amount already deposited) 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.781 of 2005 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruvallur within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent / claimant is at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

krk

To

The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Tiruvallur.

Copy To
The Section Officer,
VR Section, High Court, Madras

+1cc to Mrs.Elveera Ravindran, Advocate SR.No.94168

C.M.A.No.982 of 2009

PM(CO)
GMY(22/07/2020)