IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3654 of 2011 and
M.P.No.1 of 2011

The Oriental Insurance Co. Ltd.,
Divisional Office,
"Dwaraka" Second Floor,
New No. 79, Old No. 36,
Numgambakkam high road,
Chennai - 600 034.
...Appellant/3rd Respondent

Vs.

1.Dhamayanthi ..1st Respondent/Petitioner
2.R.Murugesan ..2nd Respondent/1st Respondent
3.V.Sellappan ... 3rd Respondent/2nd Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 07.07.2011, in M.C.O.P.No. 394 of 2006 on the file of the Motor Accidents Claims Tribunal (Subordinate - Judge) of Dharapuram at Erode District.

For Appellant : Mr.J.Chandran
For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Oriental Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 394 of 2006, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) of Dharapuram at Erode District. They have filed the present appeal questioning both the liability to pay compensation as well as the quantum of compensation awarded by the Tribunal.

2. The brief case of the first respondent/claimant is as follows:

(i) The first respondent/claimant was aged 41 years on the date of the accident and she was a Medical Practitioner and running own Hospital in the name of 'Dr.Rajamohan Hospital' at

Muthur, earning a sum of Rs.15,000/- per month.

(ii) On 01.08.2003, at about 01.00 pm, the first respondent/claimant was travelling in a car bearing Registration No. TN 04 1118 from North to South on Sivagiri - Muthur main road near Sadaiyappa Puram Burial Ground, Vilankattuvalasu. At that time, the second respondent herein drove the car bearing Registration No. TN 04 1118 in a rash and negligent manner, as a result of which, the car came to the western edge of the road and dashed against a TVS 50 XL bearing Registration No. TN 33 M 4638 with a great force. Due to this, the first respondent/claimant, the rider and the pillion rider of the TVS 50 XL bearing Registration No. TN 33 M 4638 were thrown off and sustained grievous injuries. The first respondent/claimant sustained a fracture over her Zygoma right side and got bleeding injuries all over her body. According to the first respondent/claimant, the rash and negligent driving of the driver of the said car belonging to the third respondent herein, was the cause of the accident, and that, since, the car was insured with the Oriental Insurance Company Limited, both of them are jointly and severally liable to pay compensation of Rs.10,00,000/- to her.

3. During the time of the trial, FIR (ex.p1), wound certificate (ex.p2), Charge Sheet (ex.p4), Judgment copy rendered by the Magistrate Court (ex.p5), discharge summary (ex.p8) and medical bills (ex.p9) were marked. On behalf of the Insurance Company, they examined Anuradha (rw1), an Assistant in the office of the Insurance Company. The second and third respondents herein were absent before the Tribunal and therefore, they were set ex-parte. The Oriental Insurance Company Limited contested the claim petition. The learned Tribunal, after taking note of the oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligence on the part of the driver of the said car and awarded compensation of Rs.94,400/- together with interest at the rate of 7.5% per annum to the first respondent/claimant. Aggrieved over the orders passed by the Tribunal, the Oriental Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The learned counsel appearing for the appellant would contend that at the time of the accident, as per the policy, the owner of the said car is one Srikanth and not one Sellappan as mention in the claim petition. He would further contend that the policy issued by the Insurance Company is only an 'Act only Policy' and there is no additional premium being paid to cover the risk of an occupant or a passenger and therefore, the Insurance Company cannot be fastened with liability.

5. Heard both sides and perused the materials available on records.

6. On going through the Insurance Policy (ex.R1), it is seen that no additional premium has been paid to cover the risk of an occupant or a passenger. The policy is only an 'Act only Policy' provided for the car. In the decision in C.M.A.Nos.1835 of 2007 & 1235 of 2008 in the case of National Insurance Company Limited vs. Pooja Manoj Singh and others reported in 2010 (2) TN MAC 550 (DB), it has been held as follows:

> "Private car - Act only policy - No additional premium paid to cover risk of occupants of car - Deceased travelled in car alongwith other co-passengers - Insurer, held, not liable"

Therefore, from the decision (cited supra) it is clear that the Insurance Company can be fastened with liability in respect of the injury or death of a passenger in a car which is covered by an 'Act only Policy' is no more res integra.

7. Admittedly, the first respondent/claimant travelled in the said car as an occupant and no additional premium has been paid by the owner of the car as could be evidenced from the Insurance Policy (ex.R1). Hence, the appeal preferred by the Insurance Company against the liability is hereby allowed.

8. Quantum of compensation: The Tribunal has considered various aspects and awarded a just and reasonable compensation and therefore, the quantum of compensation awarded by the Tribunal is hereby confirmed.

9. In the result,

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

(ii) The orders passed by the Tribunal directing the present appellant - Oriental Insurance Company Limited to pay the compensation to the first respondent/claimant is set aside.

(iii) The quantum of compensation awarded by the Tribunal is upheld.

(iv) It is open to the first respondent/claimant to proceed against the owner of the car bearing Registration No. TN 04 1118, in respect of the quantum of compensation, in the suitable manner known to law. It is made clear that the Insurance Company is not liable to pay compensation to the first respondent/claimant.

(v) The learned counsel for the appellant submitted that at the time of admission, the entire amount has been deposited by the Insurance Company and hence, the present appellant - Oriental Insurance Company Limited is permitted to withdraw the amount after following due process of law.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
The Motor Accidents Claims Tribunal,
The Subordinate Court,
Dharapuram at Erode District

+1 CC to Mr.J.Chandran, Advocate sr 16228.

C.M.A.No.3654 of 2011 and
M.P.No.1 of 2011

KJ(CO)
SP(07/05/2019)