IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.2525 of 2013
and
M.P.No.1 of 2013

The Branch Manager,
National Insurance Company Limited,
Branch Office, No.333, Bangalore Road,
Anuradha Complex, 3rd Floor,
Opp. Raja Theatre,
Krishnagiri – 635 001.

... Appellant/2nd Respondent

.Vs.

1.A.Gobi ..1st Respondent/Petitioner
2.A.Arokiyasamy ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 25.07.2011 passed in M.C.O.P.No.564 of 2006 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.M.Selvam

J U D G M E N T

The appellant is the second respondent in M.C.O.P.No.564 of 2006 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Krishnagiri. The first respondent filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 25.02.2006.

2.The case of the claimant is that on 25.02.2006, at about 2.00 P.M. the claimant was travelling as a pillion rider in a Hero Honda Splendor motorcycle bearing Registration No.TDD 7740 belonging to the second respondent and insured with the appellant. According to the claimant, the rider of the two wheeler was rash and negligent in riding his two wheeler and suddenly applied brakes as a result of which, he fell down and sustained grievous injuries all over his body. According to the first respondent / claimant, the rash and negligent riding of the rider of the two wheeler belonging to the second respondent was the cause of the accident and that since the said two wheeler was insured with the appellant / National Insurance Company Limited, the owner of the two wheeler as well as the insurer of the two wheeler are jointly and severally liable to pay compensation.

3.The second respondent / owner of the two wheeler remained absent before the Tribunal and therefore, he was set ex-parte. The appellant / National Insurance Company Limited, contested the claim petition. The learned Chief Judicial Magistrate / Motor Accidents Claims Tribunal, Krishnagiri, while awarding compensation of Rs.68,500/- together with interest at the rate of 7.5% per annum to the claimant / first respondent, directed both the owner of the two wheeler / the second respondent and the appellant / National Insurance Company Limited to pay the compensation amount jointly and severally to the claimant. Aggrieved over the orders passed by the Tribunal, the appellant / National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4.Mr.D.Bhaskaran, learned counsel appearing for the appellant / National Insurance Company Limited contended that since the Insurance Policy is an Act policy, the pillion rider of the two wheeler cannot claim any compensation from the Insurance Company. He therefore contended that the Tribunal was wrong in fastening liability on the Insurance Company.

5.Heard the learned counsel for the appellant / National Insurance Company Limited and the learned counsel for the first respondent / claimant.

6.A Division Bench of this Court in New India Assurance Company Limited Vs. S.Krishnasamy reported in 2015(1) TN MAC 19 (D.B) held that the occupants of a private car cannot be termed as a third party, especially, when the car had only “Act Policy” and not “Comprehensive Policy”.

7.A perusal of the copy of the Insurance copy (Ex.B1) shows that it is an Act policy and no premium was paid for the pillion rider. A copy of the F.I.R. (Ex.A1) also shows that the rider of the two wheeler was rash and negligent.

8.While considering the claim petition under Section 166 of the 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 the 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 has taken a specific plea that they are not liable to pay any compensation to the claimant.

9.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 that 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 also and therefore, the insurance company cannot escape from its liability to pay compensation.

10.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.

11.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).

12.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.

13.The Tribunal had held that the pillion rider is a third party and therefore the Insurance Company is liable to pay the compensation to the pillion rider. Such an observation made by the Tribunal is erroneous, since the Policy of Insurance does not cover the pillion rider and he cannot be termed as a third party as held by the Tribunal.

14.As far as quantum of compensation is concerned, no arguments were advanced and the perusal of the award shows that it is a just and reasonable award.

15.In the result,

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

(ii)The second respondent / owner of the two wheeler is directed to pay the compensation of Rs.68,500/- 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.564 of 2006 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Krishnagiri within a period of four weeks from the date of receipt of a copy of this order.

(iii)The orders passed by the Tribunal fastening liability on the Insurance Company is set aside.

(iv)The appellant / National Insurance Company Limited is exonerated from paying the compensation amount.

(v)The appellant / National Insurance Company Limited is at liberty to withdraw the amount deposited by them.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Krishnagiri.

+1 CC to Mr.D.Bhaskaran, Advocate sr 89088
+1 CC to Mr.M.Selvam, Advocate sr 89597

RSI(CO)
SP(24/07/2020)