IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.3355 OF 2012
and
M.P.No.1 of 2012

The Divisional Manager,
National Insurance Company Ltd.,
DO No.110, Jawaharlal Nehru Street,
Puducherry 605 001 ...Appellant/2nd Respondent

Vs.

1. M.Vasumathi
2. M.Revathy
3. M.Dwarakanathan

...Respondents/Petitioners & 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988, against the award and decree dated 04.02.2011 made in O.P. No.2164 of 2007 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Cuddalore.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.R.Sreedhar for R1 & R2
No Appearance for R3.

JUDGMENT

The appellant, the Divisional Manager, National Insurance Company Ltd., have filed this present appeal under Section 173 of the Motor Vehicles Act, 1988, questioning their liability to pay compensation awarded by the tribunal.

2.The respondents 1 and 2 / claimants, filed a claim petition in M.C.O.P. No.2164 of 2007 before the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Cuddalore, seeking compensation of Rs.7,00,000/- for the death of the Kamala Madhavan in a road accident that took place on 21.05.2007.

3.The brief case of the respondents 1 & 2/claimants is as follows:

On 21.05.2007 at about 2.15 a.m, the deceased Kamala Madhavan was proceeding towards Chennai in a Dawoo Matiz Car bearing registration No.TN.07.V.3681, belonging to the third respondent. The driver of the car drove the vehicle rashly and negligently on Nellikuppam main road and hit a tree standing along the road side, as a result of which, the deceased sustained injuries all over her body and died on the spot. According to the claimants, the rash and negligent driving of the driver of the car bearing registration No. TN.07.V.3681, belonging to the third respondent, was the cause of the accident and that, since the said car was insured with the present appellant, both of them are jointly and severally liable to pay compensation of Rs.7,00,000/- to them.

4.The third respondent (owner of the vehicle) remained absent before the tribunal and therefore, he was set exparte. The present appellant contested the claim petition by questioning their liability to pay the compensation amount. The tribunal, after analysing the evidence on record held that the present appellant is entitled to pay the compensation to the claimants since they failed to show that there was no insurance coverage for the inmates of the car as alleged by them. The tribunal, further awarded a sum of Rs.3,53,000/- together with interest at the rate of 7.5% per annum towards compensation. Aggrieved over the award passed by the tribunal, the National Insurance Company Ltd., Puducherry, has filed the present appeal.

5. Mr.D.Bhaskaran, Learned Counsel appearing for the appellant relied on the decision of Division Bench of this Court in New India Assurance Company Limited Vs. S.Krishnasamy reported in 2015(1) TN MAC 19 (D.B) and contended 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 package Policy". According to him, no premium was paid for gratuitous passenger / occupant and that the policy covers only the third party risk. He therefore would contend that the tribunal was wrong in fastening liability on the insurance company. He also drew the attention of this Court to a copy of Insurance Policy marked as Ex.P4, wherein it is clearly mentioned that it is only an "Act Policy".

6. Mr.R.Sreedhar, learned counsel appearing for the respondents 1 and 2 / claimants, would contend that, since the deceased was travelling in a private car, she has to be considered as a third party and when there is a negligence on the part of the driver of the car, the Insurance Company is liable to pay compensation to the claimants.

7. The tribunal while deciding the claim petition under Motor Vehicles Act, should examine the terms and conditions of the policy 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 finding in this regard, even though the claimants themselves have marked a copy of the policy as Ex.P4.

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

9. Under the Indian Motor Tariff (IMT), different types of policies are issued and they are contained in IMT Seciton 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 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, it is an "Act Policy", which would not cover the liability towards the inmates of the car. A perusal of the Insurance Policy (Ex.P4)clearly shows that it is only an Act Policy. The observation of the tribunal that the Insurance Company did not adduce any evidence to show that there is no coverage for the inmates of the car, cannot be sustained, especially, when the claimants themselves have filed a copy of the insurance policy (Ex.P4). As already observed, the tribunal has not given any specific finding with regard to the nature of the policy issued in favour of the owner of the vehicle and 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 to the respondents 1 and 2 / claimants.

11. In the result,

(i) The appeal is allowed. No costs. The connected miscellaneous petition is closed.

(ii) The quantum of compensation awarded by the tribunal is upheld.

(iii) The third respondent (owner of the car bearing registration No. TN.07.V.3681) is directed to deposit the entire compensation of Rs. 3,53,000/- (Rupees Three lakhs Fifty Three

Thousand only) with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the third respondent/owner of the car, the claimants are entitled to withdraw the same, after following due process of law.

(v) 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

//True Copy//

Sub Assistant Registrar

bga
To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Cuddalore.

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

+1cc to Mr.R.Sreedhar, Advocate Sr.105
+1cc to Mr.D.Bhaskaran, Advocate sr.114

C.M.A.NO.3355 OF 2012
and
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