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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.795 to 797 of 2016
and C.M.P.Nos.6431 to 6433 of 2016

United India Insurance Co. Ltd.,
Rep. By its Branch Manager,
Branch Office, Shivamangala Building,
Channagiri Road,
Bhadravathi 577 301.

.. Appellant in all C.M.As/
2nd Respondent in MCOP
Vs.

1.Mohan
2.Sharadha
3.Sathish

.. 1 to 3 Respondents in CMA 795 & 796/16/
Claimants in MCOP

1.Sujatha
2.Adhi Shankar

..1 & 2nd Respondent in CMA 797/16/Claimants in MCOP
3.R.Subramani .. 4th Respondent in CMA 795 & 796/16 &
3rd Respondents in CMA 797/16/First Respondent in MCOP

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 25.08.2015 made in M.C.O.P.Nos.898 to 900 of 2013 on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Mr.S.Arun Kumar (in all the appeals)

For Respondents : No appearance (in all the appeals)

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed against the common award dated 25.08.2015 made in M.C.O.P.Nos.898 to 900 of 2013 on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri.



2.All the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petitions.

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3.The appellant-Insurance Company is 2nd respondent in M.C.O.P.Nos.898 to 900 of 2013 on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri. The claimants filed the said claim petitions, claiming a sum of Rs.20,00,000/-, Rs.15,00,000/- and Rs.10,00,000/- respectively as compensation for the death of one Ekambaram, Kalavathi and Kishore who died in the accident that took place on 26.12.2012. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the Mahendra Jeep and directed the 2nd respondent-Insurance Company to pay a sum of Rs.8.6,2000/-, Rs.9,16,000/- and Rs.4,35,000/- as compensation to the claimants respectively at the first instance and recover the same from the 1st respondent.

4.Challenging the said common award dated 25.08.2015 made in M.C.O.P.Nos.898 to 900 of 2013, the 2nd respondent-Insurance Company has come out with the present appeals.

5.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the 1st respondent, owner of the vehicle has taken only an Act policy and Insurance Policy issued by the 2nd respondent does not cover the liability of occupant of private car. The Tribunal failed to appreciate the difference between Act only policy and package policy. The Tribunal failed to appreciate the evidence of R.W.1 and Ex.R1 and ought to have exonerated the 2nd respondent-Insurance Company. The Tribunal failed to consider the judgments reported in 2009 ACJ 104 [General Manager, United India Insurance Co. Ltd., Vs. M.Laxmi and others] and 2013 (1) TN MAC 73 (DB) [National Insurance Co. Ltd., Vs. S.Sankara Narayanan and others]. In support of his contentions, the learned counsel for the 2nd respondent relied on the following judgments reported in:

(i).2006 ACJ 1441 [United India Insurance Co. Ltd., Vs. Tilak Singh and others]:

"21.In our view, although the observations made in Asha Rani's case, 2003 ACJ 1 (SC), were in connection with carrying passengers in a goods vehicle the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider,



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as the insurance policy was a statutory policy and hence, it did not cover the risk of death or bodily injury to gratuitous passenger.

22. For the aforesaid reasons, we allow the appeal and set aside the impugned judgment and hold that appellant insurance company is not liable to pay the compensation awarded to the claimants."

(ii). 2015 1 TNMAC 19 (DB) [New India Assurance Co. Ltd., Dindigul-1 Vs. S. Krishnasamy]:

"17. In the Judgment reported in United India Insurance Co. Ltd., Shimla v. Tilak Singh, 2006 (1) TN MAC 36 (SC), the Hon'ble Supreme Court has held as follows:

"15. In Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd., 1977 (3) SCR 372, the Insurance Company had raised the contention that the scope of Statutory Insurance under Section 95(1)(a), read with 95(1)(b)(i) of the Motor Vehicles Act, 1939 does not cover the injury suffered by a passenger and, since there was a limited liability under the Insurance Policy, the risk of the Insurance Company would be limited to the extent it was specifically covered. After referring to the English Road Traffic Act, 1960, and Halsbury's Laws of England (Third Edition), this Court came to the conclusion that Section 95 of the 1939 Act required that the Policy of Insurance must be a Policy insuring the insured against any liability incurred by him in respect of death or bodily injury to a third party and rejected the contention that the words "third party" were wide enough to cover all persons except the insured and the Insurer. This Court held as under: (vide Para 20)

"Therefore it is not required that a Policy of Insurance should cover risk to the passengers, who are not carried for hire or reward. As under Section 95, the risk to a passenger in a vehicle, who is not carried for hire or reward is not required to be insured the plea of the Counsel for the Insurance Company will have to be accepted and the Insurance Company held not liable under the requirements of the Motor Vehicles Act."



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22. For the aforesaid reasons, we allow the Appeal and set aside the impugned Judgment holding that the Appellant-Insurance Company is not liable to pay the Compensation awarded to the Claimants."

18. In view of the rulings cited above, we are of the considered view that since, the Policy is only an Act Policy issued by the Appellant-Insurance Company to the Insurer and the deceased Palanisamy was only an occupant of the Private Car, cannot be considered as 'Third party' of the vehicle and the Policy is covered risks to the third party alone. Hence, the deceased was only the occupant of the Private Car and the said Policy will not cover the risk of the deceased. The Doctrine of Pay and Recovery cannot be applied to the facts of the case, since the Appellant-Insurance Company is not liable to pay the Compensation. Hence, pay amount to the Claimants and then recover the same from the owner of the vehicle involved in the accident cannot be ordered and in view of the above, the rulings cited on the side of the Respondents 1 to 5/Claimants are not applicable to the facts of the present case.

19. Hence, we are of the considered view that since the Act Policy did not cover the risk, the Insurance Company is not liable to pay any Compensation to the Claimants/dependents of the deceased and the owner of the vehicle alone is liable to pay damages to the Claimants, as the accident occurred due to rash and negligent act of the driver of the vehicle. "

(iii). 2009 ACJ 104 [General Manager, United India Insurance Co. Ltd., Vs. M. Laxmi and others]:

"6. There is no dispute that the circular dated 2-6-1986 refers to comprehensive policy. It categorically states that standard form for motorcycle should cover liability to pillion passengers in case of comprehensive policy. As noted by MACT, the policy in the instant case was an Act policy.

7. In India Assurance Co. Ltd. v. Asha Rani [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] it has been noted as follows: (SCC p. 235, paras 25-27)

"25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily



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injury to any passenger of 'public service vehicle'. Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'.

26. In view of the changes in the relevant provisions in the 1988 Act vis-à-vis the 1939 Act, we are of the opinion that the meaning of the words 'any person' must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place."

8. In *United India Insurance Co. Ltd. v. Tilak Singh* [(2006) 4 SCC 404 : (2006) 2 SCC (Cri) 344] it has been noted as follows: (SCC p. 412, para 21)

"21. In our view, although the observations made in *Asha Rani* case [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] were in connection with carrying passengers in a goods vehicle, the same



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would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

9. In view of what has been stated by this Court in Asha Rani [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] and Tilak Singh [(2006) 4 SCC 404 : (2006) 2 SCC (Cri) 344] cases, the order of the High Court is clearly unsustainable and is set aside and that of MACT is restored."

6. Heard the learned counsel appearing for the 2nd respondent-Insurance Company and perused the materials available on record. Notice sent to the respondents herein/claimants as well as the 1st respondent in the claim petition were not served and therefore this Court ordered paper publication and the same was effected, serving notice on the respondents herein. Though the names of the respondents herein were printed in the cause list, there is no representation for them either in person or through counsel.

7. From the materials on record, it is seen that Ex.R1-Insurance Policy is only Act policy/statutory policy. The 1st respondent has not paid any extra premium to cover the risk of occupant of the car owned by him. He has paid extra premium to cover one worker only. The Tribunal having held that the 2nd respondent-Insurance Company is not liable to pay compensation to the occupants of the car under Act policy, erred in ordering pay and recovery. The Tribunal also erred in directing the 2nd respondent-Insurance Company to satisfy the highest compensation for one person.

8. In view of the well settled judicial pronouncement and the judgments reported in 2006 ACJ 1441, 2015 1 TN MAC 19 DB, 2017 1 TNMAC 566 and 2009 ACJ 104 (referred to above) and the judgment of this Court dated 28.02.2019 made in C.M.A.No.2696 of 2018 (pronounced by me), it has been held that the Insurance Company is not liable to pay compensation to the occupants of the car when the policy issued by the Insurance Company is only statutory Act policy. When the Insurance Company is not liable to pay compensation, pay and recovery cannot be ordered. For the above reasons, the award of the Tribunal fastening the liability on the 2nd respondent-Insurance Company is liable to be set aside



and is hereby set aside. The claimants in all the appeals are entitled to compensation only from the 1st respondent/owner of the vehicle.

9. In the result, all the appeals are allowed and the compensation awarded by the Tribunal at Rs.8.6,2000/-, Rs.9,16,000/- and Rs.4,35,000/- along with interest and costs is confirmed. The 1st respondent/owner of the vehicle is directed to pay the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.Nos.898 to 900 of 2013. The claimants are permitted to withdraw the award amount, as per the ratio of apportionment fixed by the Tribunal, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

gsa

To

1. The Additional District Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

Copy To : The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.S.Arun Kumar, Advocate SR.No.28490

C.M.A.Nos.795 to 797 of 2016
and C.M.P.Nos.6431 to 6433 of 2016

SAI (CO)
GMY (27/09/2019)