

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1661 of 2014
and C.M.P.No.1 of 2014

Iffco Tokio General Insurance Co. Ltd.,
Servicing Officer at
No.16, Venkararamana Round Road,
Mahalingapuram, Pollachi-642 002.

Having its Branch Office at
Tulsi Chambers 3rd Floor,
No.195, T.V.Samy Road West,
R.S.Puram, Coimbatore. ... Appellant/3rd Respondent

Vs.

1. Rohit Kumar Chandra1st Respondent/Petitioner
2. Karthik
3. R. Prasath ... Respondents 2
& 3/Respondent 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173
of Motor Vehicles Act, 1988, against the judgment in MCOP.
No.1972 of 2012, dated 30.08.2013, on the file of the Motor
Accidents Claims Tribunal, Special Subordinate Court,
Coimbatore.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr. M.A.P.Thangavel for R1
Notice served - no appearance
For R2 and R3

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the
appellant Insurance Company against the judgment in MCOP.
No.1972 of 2012, dated 30.08.2013, on the file of the Motor
Accidents Claims Tribunal, Special Subordinate Court,
Coimbatore.

2.The appellant-Insurance Company is the respondent in
M.C.O.P.No.1972 of 2012 on the file of the Special

Subordinate Court, (Motor Accidents Claims Tribunal), Coimbatore. The respondent filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 18.08.2012.

3.The Tribunal, considering the pleadings, oral and documentary evidence held that due to rash and negligent riding by the rider of the motor cycle bearing Registration No.KL 27 525 with his friend Vinayak as a pillion rider with moderate speed from north to west in opposite Bharani Complex in B.K.Pudur on Coimbatore to Palakad Road, the accident had occurred. As the respondent's vehicle bearing Registration No.TN 37 BB 1406 was insured with the appellant by package policy with provision for Personal Accident Cover for the owner or the driver, directed the appellant-Insurance Company to pay the sum of Rs.7,70,000/- as compensation to the respondent.

4.Against the award challenging the liability fastened on the appellant as well as the quantum of compensation awarded by the Tribunal, the appellant-Insurance Company has come out with the present appeal.

5.The learned counsel appearing for the appellant-Insurance Company contended that the claim petition filed by the respondent is not maintainable and the Tribunal failed to adjudicate the issue on maintainability and liability. As per Section 147 of the Motor Vehicles Act, the Insurance Company is not liable to pay the compensation for the injuries to the owner or the death of the owner of the vehicle. The Insurance company is liable only to indemnify the claim of the third party against the insured. The claim of the insured for compensation for his own injury is not maintainable. Only when third party liability arises, the Insurance Company is liable to pay the compensation on behalf of the insured. The insured cannot claim compensation against himself. The Insurance Company is liable to pay the compensation for the injuries to the owner/insured only when extra premium is paid towards Personal Accident Coverage. The liability of insured is limited only to Rs.1,00,000/- in respect of owner of the two wheeler. The Tribunal failed to consider this issue. The award of Rs.3,70,000/- with interest at the rate of 7.5% awarded against the appellant-Insurance Company is erroneous, as the claim petition itself is not maintainable.

6.The learned counsel appearing for the appellant-

Insurance Company in support of his contentions, relied on the following judgments:

(i) The Judgment dated 27.09.2018 made in C.MA.1150 of 2017 [National Insurance Co. Ltd., Vs. Karuppiah and others]:

"9. The Hon'ble Supreme Court in Dhanraj vs. New India Assurance Co., Ltd. and anr., (2004 (8) SCC 553), held that an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. According to the Supreme Court, Section 147 does not require an insurance company to assume the risk for death or bodily injury to the owner of the vehicle.

10. The legal position is therefore very clear that there is no contractual liability on the part of the Insurance Company to indemnify the legal representatives of the insured on account of his death.

11. It is not the case of the claimants that additional premium was paid to cover the insured. The policy was an act policy, indemnifying only the third parties."

(ii) CDJ 2008 SC 754 [Oriental Insurance Co. Ltd Vs. Rajni Devi and others]:

"11. According to the terms of contract of insurance, the liability of the insurance company was confined to Rs.1,00,000/- (Rupees one lac only). It was liable to the said extent and not any sum exceeding the said amount."

(iii) 2017 (2) TN MAC 674 (DB) [Divisional Manager, United India Insurance Company Ltd. Vs. R.Rekha and others]:

"26. As far as the present case is concerned, the deceased was traveling as a pillion rider in the two wheeler owned by him. Admittedly, the deceased himself was the owner of the two wheeler. At the time of accident, the driver of the two wheeler suddenly applied brake and hit a cyclist

which led to the accident. No other motor vehicle has been involved in this case. Thus, the accident did not involve any other motor vehicle other than the one in which the deceased was traveling as a pillion rider. Therefore, the liability of the insurance company is only to the extent of indemnification of the insured against the third person or in respect of damages of property. While so, the insurance company cannot be fastened with any liability under the provisions of the Motor Vehicles Act for the death of the deceased who himself was the owner of the vehicle and when no other motor vehicle was involved in this case. Therefore, the question of the insurer being liable to indemnify the deceased/owner of the vehicle does not arise. Since the deceased himself was the owner of the two wheeler and not a third party, the claim petition filed by the claimants will not come within the purview of Section 146 or 147 of the Motor Vehicles Act for the purpose of payment of compensation. Therefore, we hold that the impugned Judgment and Decree of the Tribunal cannot be sustained. The Appeal filed by the Insurance Company deserves only to be allowed. At the same time, it is needless to mention that the claimants are entitled for payment of Rs.1,00,000/- only towards Personal Accident Cover proportionate to the premium paid by the deceased."

(iv)CDJ 1997 Supreme Court 028 [Oriental Insurance Co. Ltd Vs. Sunita Rathil]:

"3.It follows that the insurer cannot be held liable on the basis of the above policy in the present case and, therefore, the liability has to be of the owner of the vehicle. However, we find that the High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable in the present case. This conclusion, reached by the High Court, is clearly erroneous. The liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract

of insurance. There is, thus, a basic fallacy in the conclusion reached by the High Court on this point."

(v) 2005 ACJ Volume I [Dhanraj Vs. New India Assurance Co. Ltd and another]:

"8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

9. In the case of Oriental Insurance Co. Ltd. Vs. Sunita Rathi & Ors. [1998 ACJ 121 (SC)] it has been held that the liability of an Insurance Company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the Insurance Company has no liability also."

(vi) CDJ 2013 SC 355 [New Indian Assurance Company Limited Vs. Prabha Devi & others]:

"8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle."

(vii) 2018 (2) TN MAC 286 (SC) [National Insurance Company Ltd Vs. Ashalata Bhowmik and others]:

"9. Therefore, the High Court was not justified in directing the appellant/insurer to pay the compensation determined by the Tribunal. Since the indemnification extended to personal accident of the deceased is limited to Rs. 2,00,000/- under the contract of insurance, the respondents are entitled

for the said amount towards compensation. Hence, the appellant is directed to deposit the said sum of Rs. 2,00,000/- with interest @ 9 per cent per annum from the date of the Claim Petition till the date of deposit with the Tribunal within a period of four weeks from today."

(viii)2007 (2) TN MAC 56 (SC) [Oriental Insurance Company Ltd. Vs. Jhuma Saha & Others]:

"11. Liability of the insurer-Company is to the extent of indemnification of the insured against the respondent or a injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicle Act, the question of the insurer being liable to indemnify insured, therefore, does not arise.

.....

13.The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case."

7.Per contra, the learned counsel appearing for the respondent contended that the respondent has taken package policy with coverage for personal accident to owner or driver. An extra premium has been paid for Personal Accident Coverage. In respect of the personal accident claim, the owner of the vehicle is not required to prove the negligence of anybody. The Insurance Company is liable to pay the compensation amounts directly to the respondent/owner of the vehicle. The Tribunal has considered all the materials available on record in proper perspective and awarded just compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the respondent and perused the materials available on record.

9.From the materials on record, it is seen that on 22.10.2015, when the respondent was riding his motor cycle, one Mariappan rider of the motor cycle bearing Registration No.PY-02-D-0641, came in the opposite direction in a rash

and negligent manner and dashed against the respondent. The respondent suffered injuries and was taken to the hospital for treatment. He has filed the claim petition against the appellant-Insurance Company, who is the insurer of his motor cycle. According to the respondent, he has taken package policy and has paid extra premium for Personal Accident Coverage. In view of the same, he is entitled to claim compensation from the appellant-Insurance Company. According to the respondent, he is entitled to compensation of Rs.18,50,000/-, but he has restricted his claim to Rs.15,00,000/-. The appellant-Insurance Company in the counter statement has denied their liability to pay the compensation and contended that the claim petition is not maintainable against them.

10.The contention of the learned counsel appearing for the respondent is that, in view of the package policy taken by the respondent/claimant including Personal Accident Coverage, the appellant-Insurance Company is liable to pay Rs.3,70,000/- as awarded by the Tribunal. On the other hand, it is the contention of the learned counsel appearing for the appellant-Insurance Company that the claim petition itself is not maintainable and Personal Accident Coverage is only to the limit of Rs.1,00,000/- and the respondent/claimant is entitled to compensation only to the maximum limit of Rs.1,00,000/-.

11.From the judgments relied on by the learned counsel appearing for the appellant-Insurance Company which are squarely applicable to this case, it is clear that the liability of the insurer arises only in respect of the claim of the third parties. The insurer is not liable to pay compensation for bodily injuries or death of the owner or driver of the vehicle. Only when extra premium is paid to cover personal accident, the insurer is liable to pay the compensation. The compensation will be restricted to the limit mentioned in the policy. In the present case, the respondent/claimant has paid extra premium for Personal Accident Coverage. In the policy, personal accident claim is restricted to a maximum sum of Rs.1,00,000/-. As per the judgment of the Hon'ble Apex Court reported in CDJ 2008 754 SC, wherein it has been held in paragraph No.11 (cited supra) that the liability of the Insurance Company was confined to Rs.1,00,000/-. The Insurance Company is liable to pay only to that extent and not exceeding Rs.1,00,000/-. In view of the restriction contained in the insurance policy marked as Ex.P2 and the judgments referred to above, the appellant-Insurance Company is liable to pay only Rs.1,00,000/- as compensation to the respondent. The award of the Tribunal directing the appellant-Insurance Company

to pay a sum of Rs.3,70,000/- is set aside. The appellant-Insurance Company is directed to pay a sum of Rs.1,00,000/- together with interest at the rate of 7.5% from the date of petition till the date of payment to the respondent.

12. Accordingly, the Civil Miscellaneous Appeal is partly allowed. The appellant-Insurance Company is directed to deposit the modified award amount of Rs.1,00,000/- together 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 order. On such deposit, the respondent/claimant is permitted to withdraw the award amount with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa/mfa

To

The Sub Judge,
The Motor Accidents Claims Tribunal/
Special Subordinate Court,
Coimbatore.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.102169

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.101033

C.M.A.No.2859 of 2018
and C.M.P.No.21771 of 2018

SVI (CO)
CB(27/07/2020)

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