IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.358 of 2007
and
M.P.01 of 2007

Branch Manager,
Oriental Insurance Co.Ltd.,
Srinivas Mansion,
364/1,10-B Main, 3rd Block,
Jayanagar,
Bangalore-560 011. ...Appellant

vs.

1.Thamarai Selvi ..Respondents 1 to 6/Petitioner 1 to 6
2.Minor Vinodhini
3.Minor Kalaiyarasan
4.Minor Nandhini
(Minors rep by Mother R1/Thamarai Selvi)
5.Settu Gounder
6.Rathinammal
7.A.N.Murugesan ...7th Respondent/1st Respondent
8.D.Balasubramanian
9.Branch Manager,
New India Assurance Co.Ltd.,
Branch Office,
25/30, Bus Stand Salai,
Nandhiyal, Kurnool. ... 9th Respondents/4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 14.02.2006 passed in MCOP.No.320 of 2004 on the file of the Motor Accident Claims Tribunal, Judicial Magistrate No.II, Dharmapuri at Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.V.Kumaravelan for R1 to R6
No appearance for R7

JUDGMENT

The Oriental Insurance Company Limited, the second respondent in MCOP.No.320 of 2004 on the file of the Motor Accident Claims Tribunal, Judicial Magistrate No.II, Dharmapuri at Krishnagiri, has filed the present appeal. The first respondent filed the said claim petition under Section

166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the death of her husband Perumal, in a road accident that took place on 18.09.2002.

2. The case of the claimant is that on 18.09.2002 at about 02.30AM., the deceased Perumal and others were travelling in the Maruthi Gypsy Car bearing Regn.No.KA-01-M-4548, from Hosur to Krishnagiri side. When the car was coming near Chennapalli Diversion Road, the driver of the said car driven the car in a rash and negligent manner and at an uncontrollable speed, without sounding horn and without minding the rules of the road, and dashed against the parked lorry bearing Regn.No.AP-21-U-8557, which met with an accident already and parked on the middle of the road without any signal. Due to the said incident, the said Perumal and one Sagaya Gunasekar crushed to death on the car itself.

3. The learned Motor Accident Claims Tribunal / Judicial Magistrate No.II, Dharmapuri at Krishnagiri, after analysing the evidence on record, awarded a compensation of Rs.6,70,000/- together with interest at the rate of 9% per annum to the claimants. Aggrieved over the orders passed by the Tribunal, the Tamil Nadu State Transport Corporation Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The learned counsel for the appellant would submit that the Tribunal erred in holding that the appellant is liable to pay compensation, inspite of the fact that the Insured has violated the policy condition by using the car for hire. Further, the Court below failed to note that the Insured has entered into contract with the appellant only to cover the car as 'Private Car', restricted to “Act only” and the occupants are not covered under the said policy and failed to appreciate the evidence of R.W.1 and R.W.2, Ex.B1 and Ex.B2 to hold that the cumulative question put to the said witnesses cannot be construed that the occupants are also third parties. The person outside the vehicle is a third party and all persons other than the contracting party i.e, Insured and Insurer cannot be termed as Third party. The Claims Tribunal in any event ought to have relied on the judgment of Hon'ble Supreme Court reported in 2002 (4) LW 14, 2002 AIR SCW 259 and 2003 ACJ I and dismissed the claim against the appellant. The Tribunal erred in coming to the conclusion that the driver of the car was responsible for the accident, inspite of the fact that the same has occurred due to the negligent parking of the lorry in the middle of the National Highways Road without any signal or indication. The Tribunal ought to have considered the manner of accident and held that the driver of the car cannot be held responsible for the accident and erred in imposing entire liability on the driver of the car, inspite of the fact that the accident occurred solely due to the negligent parking of the lorry in the middle of the National Highways Road. Hence, the learned counsel for the appellant

prays to allow this appeal.

5.In the instant case, though, F.I.R was registered against the driver of the Maruthi Gypsy Car bearing Regn.No.KA-01-M-4548, the Tribunal, based on the evidence adduced on both sides, have categorically held that the driver of the Maruthi Gypsy Car was responsible for the accident. The claimant and the owner of the offending vehicle did not file any appeal or cross objections against the orders passed by the Tribunal. A perusal of the order passed by the tribunal clearly shows that the tribunal has taken into consideration all aspects before fixing the negligence on the part of the driver of the Maruthi Gypsy Car and all the observations made by the tribunal are unassailable.

6.However, while deciding a claim petition filed under the Motor Vehicles Act, the Tribunal should examine the terms of the policy produced by the Insurer and in the event of denial of liability by the insurer, a finding should be recorded with regard to the nature of the policy, as to whether, it is "Act Policy" or "Comprehensive 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, since the policy of Insurance is only an "Act Policy".

7.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.

8.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 car.

9.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).

10.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 gratuitous passengers of the private car. A perusal of the Insurance Policy (Ex.P3) clearly shows that it is only an 'Act policy' and only a 'Comprehensive Policy/Package Policy would cover the liability of the inmates of the car or gratuitous passenger in a car. This Court finds that since the deceased travelled in a private car as gratuitous passenger, he is also equally responsible for the accident and therefore fixes contributory negligence on the part of the deceased by 40% and 60 % contributory negligence on the owner of the vehicle. The owner of the Maruthi Gypsy car is insured with the appellant herein and hence, the appellant herein is liable to pay 60% of the compensation amount awarded by the Tribunal.

11.In the result,

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

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

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

sbn

To

1.The Motor Accidents Claims Tribunal,
Judicial Magistrate No.II,
Dharmapuri,
Krishnagiri.

2.V.R.Section,
High Court,
Madras. +2 Copies

+1cc to Mr.S.Arun Kumar, Advocate SR.No.12521

+1cc to Mr.V.Kumaravelan, Advocate SR.No.12485

CMA.No.358 of 2007
and
M.P.01 of 2007

RR(CO)
GMY(29/04/2021)