IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3241 of 2010

The Divisional Manager,
The United India Insurance Company Limited,
Divisional Office, Ranipet.
.. Appellant/Respondent

Vs.

1.Prokodi
2.Kiruthika (Minor)
(Minor 2nd respondent is represented by Guardian/Mother the 1st respondent)
3.S.Sundari (died)
4.Chandra @ Sargunam Arul
5.V.Lakshmi .. Respondents 1 to 3/Petitioner 1 to 3

(R4 & R5 brought on records as LRs of the deceased R3 Viz S.Sundari vide Court orders in C.M.P.Nos.27579, 27580 & 27581 of 2019 in C.M.A.No.3241 of 2010)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.07.2009 made in M.A.C.T.O.P.No.47 of 2002 on the file of Motor Accident Claims Tribunal, Subordinate Court, Cheyyar.

For Appellant : Mr.S.J.Jagadev

For Respondents : Mr.P.Arivudainambi for R1, R4, R5
R3- Died Steps taken

JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant seeking to set aside the Award and Decree dated 10.07.2009 passed by the Motor Accident Claims Tribunal, Subordinate Court, Cheyyar in M.A.C.T.O.P.No.47 of 2002.

2. The appellant is the respondent in M.A.C.T.O.P.No.47 of 2002 on the file of Motor Accident Claims Tribunal, Subordinate Court, Cheyyar. The claimants have filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death

of one Balamurugan in the accident that took place on 02.09.2001.

3. The case of the claimants is that on 02.09.2001 at about 00.30 hours at Arcot to Ranipet Main Road, near Hari Agencies, the Vehicle, TVS Sport, bearing Regn.No.TN-23-S-8661, which was ridden by its driver, suddenly lost its control and dashed against M-80 vehicle, in which the deceased Balamurugan was riding as a pillion and as a result of the accident, he died.

4. The learned counsel for the appellant would submit that the award passed by the Tribunal is contrary to law, weight of evidence and probabilities of the case, the Tribunal committed grave and apparent error in awarding a total compensation of Rs.7,48,230/- in this case involving death of the owner of the vehicle, whose driver was at fault and imposing liability on the appellant/ Insurance Company. Further, he would submit that the Tribunal committed error in awarding the said compensation of Rs.7,48,230/- against the Appellant/ Insurance Company as if the deceased was a third party, the Tribunal failed to note that the owner of the vehicle (TVS Sports) travelled as a pillion rider, which was driven rashly and negligently by its rider, hence, the deceased cannot be treated as a third party, the owner of the vehicle was not covered either under the policy or under the M.V.Act., hence, the appellant is not liable to indemnity, the Tribunal failed to see that since it is a case involving owner of the vehicle, who was at fault, the deceased cannot be treated as a third party, besides he, being the owner of the vehicle, is not entitled for compensation, the Tribunal failed to follow the principles laid down by the Hon'ble Supreme Court in the case New India Assurance Company Limited-Vs- Sadananda Mukhi and others [2009(1) TNMAC 55 SC] where the above issue was considered and held that when it is an "act only policy"0, the liability of the Insurer is only statutory and not contractual in nature and therefore, the Insurer is not liable to pay compensation, since the owner cannot be treated as a third party as per Section 147 of M.V.Act., hence, he prays to allow this appeal.

5. Learned counsel for the respondents 1,2,4 and 5/claimants submitted that the Tribunal has taken into the consideration each and every aspect and has fastened the liability on the appellant herein. The Tribunal has taken Ex.R1 report along with the evidence of RW1/Officer of the appellant and ultimately rejected the evidence of RW1 and has arrived at the said conclusion. In such view of the matter, it cannot be contented by the appellant herein, now, to state that they are not liable to compensate the respondents herein. Further, without marking the Insurance policy and without letting in any evidence about the same, the contention of the appellant that it is only an Act only Policy and the appellant is not liable to compensate the claimants, cannot hold good.

6. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

7. At the outset it has to be pointed out that when it is an "Act only policy", the liability of the Insurer is only statutory and non-contractual in nature. Admittedly, in this case, the owner of the vehicle did not driven the vehicle, on the fateful day, and the deceased was travelling as a pillion rider. In support of the contention of the learned counsel drew the attention of this Court to the principle laid down by the Honourable Supreme Court in the case of New India Assurance Company Limited supra, wherein the Honourable Supreme Court after considering the issue in detail has held that when it is an Act only policy, the liability of the insurer is only statutory and not contractual in nature. However, it has to be pointed out that the contention of the appellant that the policy covered is only the "Act only Policy" should be rejected, since such a specific defence has not been taken before the Tribunal. Unless such a specific defence is taken by the Insurance Company in the counter, it is not open to them to contend at this stage of Appeal that the policy is the "Act only Policy". Hence, the said contention taken by the Insurance Company on the point of "Act only Policy" stands rejected.

8. However, It is seen that earlier, this Court has passed an order on 05.04.2011, permitting the claimants to withdraw a sum of Rs.3,00,000/- and a sum of Rs.40,000/- respectively, with proportionate interest and costs lying in the credit of M.C.O.P.No.47 of 2002 on the file of the Motor Accident Claims Tribunal, Sub Court, Cheyyar, without furnishing any security, after filing a memo to that effect. As far as the share of the minor is concerned, the Tribunal was directed to deposit her share, along with accrued interest and costs in her name viz, Kiruthiga, in any one of the nationalized banks in proximity to the residence of the claimants for a period of 8 years by giving cumulative effect.

9. The accident occurred on 02.09.2001, nearly 20 years has passed. Since the date of accident, the minor child who was then 2 months at the time of the accident should have attained majority by now and she ought to have also withdrawn her share by proving her majority certificate before the trial Court. This Court while entertaining this appeal vide order dated 05.04.2011 in M.P.No.01 of 2011 allowed the parties to withdraw their respective shares, without furnishing any security under the Motor Vehicles Act being the welfare piece of legislation is intended to benefit the parties who are aggrieved on account of accidental death or injury and when that being the case, this Court is not inclined to upset the award amount granted to the

claimants. The Tribunal has rightly taken into account that the legislation is benevolent and the objective is rendering social justice.

10. Therefore, the appeal filled by the Insurance company has no merits and thus the same is dismissed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Sbn

To

1.The Motor Accident Claims Tribunal,
Subordinate Court, Cheyyar.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.P.Arivudainambi, Advocate, S.R.No. 12893

C.M.A.No.3241 of 2010

RR(CO)
GN(28/04/2021)