IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.12.2020
PRONOUNCED ON : 08.12.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3510 of 2011
and
M.P.No.1 of 2011

(Through Video Conferencing)

National Insurance Co., Ltd.,
Branch Office-I,
Thanthai Periyar Market Complex,
Post Box No.15,
Salem.

..Appellant/2nd Respondent

vs.

1.K.Soundarajan ..1st Respondent/Claimant

2.P.Purushothaman ..2nd Respondent/1st Respondent

3.Saravanan ..3rd Respondent/3rd Respondent
(2nd respondent was set exparte.
Hence notice against
him may be dispensed with)

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.45 of 2006 dated 17.03.2010 on the file of the Motor Accidents Claims Tribunal F.T.C.(Additional District Court) Dharmapuri.

For Appellant	: Mr.K.Padmanabhan
For 1st respondent	: Mr.S.C.Viswanath
R2	: Exparte
R3	: Left

J U D G M E N T

In this Civil Miscellaneous Appeal, the appellant Insurance Company has challenged the impugned Judgment and Decree dated 17.03.2010 passed by the Motor Accidents Claims Tribunal, Fast Track Court (Additional District Court), Dharmapuri in M.C.O.P.No.45 of 2006.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,73,672/- as compensation together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit and costs, to the 1st respondent/claimant under the following heads:-

Heads	Amount
Disability (30 x 2,000)	Rs.60,000/-
Injuries	Rs.30,000/-
Medical Expenses as per Ex.A4	Rs.45,772/-
Transportation as per Ex.A6	Rs.20,900/-
Pain and Sufferings	Rs.10,000/-
Mental Agony	Rs. 5,000/-
Extra Nourishment	Rs. 2,000/-
Total	Rs.1,73,672/-

3. Learned counsel for the appellant Insurance Company is present. The learned counsel for the 1st respondent/claimant is also present. The 2nd respondent has remained exparte and the 3rd respondent has left.

4. It is submitted that the Tribunal erred in awarding the aforesaid compensation to the 1st respondent/claimant inasmuch as the insured vehicle was used for commercial purpose for hire though it was a private vehicle.

5. It is further submitted that the policy was in the name of the previous owner (2ndrespondent) though it had been sold to the 3rd respondent on the date of the accident and necessary name transfer had been effected in the RC book of the insured vehicle.

6. It is the contention of the appellant Insurance Company that the Tribunal erred in awarding the aforesaid compensation to the 1st respondent/claimant as the insured vehicle was a private vehicle and could not be used as vehicle for hire and therefore, the appellant Insurance Company cannot be made liable

for the injuries suffered by the 1st respondent/claimant due to the accident in the insured vehicle.

7. It is submitted that the insured vehicle did not have requisite permit to ply as a commercial vehicle for being hired by passengers.

8. It is further submitted that even otherwise, policy was that of an Act Policy and as an occupant, the 1st respondent-claimant cannot claim any compensation from the appellant-Insurance Company as a third party.

9. It is therefore submitted that no liability can be fastened on the appellant-Insurance Company merely because the driver of the insured vehicle had driven it in a rash and negligent manner and caused the accident resulting in injury to the 1st respondent/claimant.

10. In this connection, the learned counsel for the appellant-Insurance Company relied on the following decisions:-

i. New India Assurance Co. Ltd. Vs. S.Krishnasmay and Others, 2014 SCC OnLine Mad 11876 : (2015) 1 TN MAC 19 (DB);

ii. Royal Sundaram Alliance Insurance Company Vs. A.Meenakshi and Others, 2009 SCC OnLine Mad 589 : (2009) 1 TN MAC 249 (DB).

11. It is further submitted that the current owner of the insured vehicle, namely, the 3rd respondent alone was liable as there was no contract of indemnity with the 3rd respondent as the insurance policy continued to be in the name of the previous owner of the insured vehicle, namely, the 2nd respondent P.Purushothaman.

12. It is therefore submitted that the Tribunal erred in awarding the compensation to the 1st respondent/claimant who travelled in the insured vehicle along with others by hiring the insured vehicle which was contrary to the policy and with a valid permit.

13. It is further submitted that the 1st respondent/claimant and others who travelled in the insured vehicle were unaware of the fact that the insured vehicle was registered for the own purpose and not for the commercial purpose. It is therefore submitted that even if the vehicle was a private vehicle, it is open for the insurer to pay and recover the compensation from the owner of the insured vehicle.

14. Defending the impugned Judgment and Decree, the learned counsel for the 1st respondent/claimant submitted that the insured vehicle had an insurance policy and therefore, the appellant-Insurance Company cannot be distance itself from the liability.

15. Heard the learned counsel for the appellant and the 1st respondent. I have perused the impugned Judgment and Decree and the evidence on record.

16. The brief facts of the case are that on 03.07.2004 at about 2 a.m., the 1st respondent/claimant along with others travelled in the insured Tata Sumo four wheeler bearing registration No.TN-47-H-8748, from Periyampatti to Thirupathi for Thirupathi Thirumalai Swami Tharishanam, on Gudiyatham to Chitoor road.

17. The driver of the insured vehicle allegedly drove it in a rash and negligent manner and dashed it against a palm tree on the left side of the road, as a result of which, one of the passengers died while the 1st respondent/claimant and few others suffered grievous injuries and underwent operations.

18. The insured vehicle had changed the hands since it was first purchased. Ex.R1 R.C book of the insured vehicle also indicates that it is a vehicle for private use. At the time of the accident on 03.07.2004, the 3rd respondent was the registered owner of the insured vehicle though the insurance policy continued to be in the name of the 2nd respondent, the previous owner of the vehicle as is evident from the Ex.A3 Insurance Policy.

19. By a fiction under Section 157 of the Act, the policy is deemed to have been transferred in favour of the 3rd respondent. Therefore, the argument that the Insurance Policy was in the name of the 2nd respondent and not in the name of 3rd respondent or there was not endorsement in the policy is of no consequence.

20. The insured vehicle was not a Transport Vehicle within the meaning of Section 2(47) of the Motor Vehicles Act, 1988. The insured vehicle also did not have requisite permit to carry passengers for hire or reward. The passengers travelled in the insured vehicle as if the insured vehicle was a taxi though it is permitted to ply only for private use of the owner.

21. Under Section 149(2) of the Act, an insurer can defend the claim that there has been breach of a specific condition of the policy, namely,

i) a condition that excludes the use of the vehicle, —

(a) for hire or reward, where the vehicle is, on the date of the contract of insurance, a vehicleis not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motorcycle.

22. That apart, it also entitles the insurer to raise the issue pertaining to a condition that excludes driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification or that excludes liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion.

23. A further defence that can be availed of by the insurer is that the policy is void on the ground that it has been obtained by non-disclosure of the material fact or by representation of act which is false in the material particular.

24. Therefore, the appellant insurer is entitled to raise the defence in Section 149 (2) (a) of the Act. In Amrit Paul Singh and Another Vs. Tata AIG General Insurance Company Limited and Others, 2018 (7) SCC 558, the insurer sought to distance itself from the liability on the ground that insured lorry/truck did not have a requisite permit and therefore the insurer cannot be made liable to pay the compensation to the claimants.

25. It was a case of third party claim. The case involved in the aaccident between the motorcycle and the insured lorry which did not possess valid permit.

26. The Hon’ble Supreme Court after referring to the several decisions followed the views in National Insurance Company Limited Vs. Swaran Singh, (2004) 3 SCC 297 and in Lakhmi Chand Vs. Reliance General Insurance, (2016) 3 SCC 100 observed that even if the insured vehicle did not have a valid permit, the insurer can pay and recover the compensation from the owner of the insured vehicle.

27. The Court further held that the order passed by the lower courts directing the insurer to pay the compensation with

interest with the stipulation and that it was entitled to recover the same from the owner of the vehicle was proper and in consonance with the principles to pay and recover.

28. Since the insured vehicle was used for carrying the passengers for hire/reward and was not registered as a "public service vehicle" to carry passengers for hire, an insurer cannot be fastened with liability. Therefore, the appellant Insurance Company is entitled to take the defence under Section 149(2) of the Motor Vehicles Act, 1988.

29. At the same time, as per the decision of the Hon'ble Supreme Court Amrit Paul Singh and Another Vs. Tata AIG General Insurance Company Limited and Others, 2018 (7) SCC 558 an insurance company can be directed to pay and recover the amount from the owner of the insured vehicle as it is only a violation of policy condition.

30. Therefore, the insurer can be asked to pay and recover the amount from the owner of the vehicle if the policy otherwise allows payment of compensation to the injured or the dependents of the deceased accident victim.

31. In Oriental Insurance Company Limited Vs. Surrendra Nath Loomba and Others, (2012) 13 SCC 792, the Hon'ble Supreme Court held that the liability would depend upon the nature of policy and remitted the case back as only the Insurance Certificate was filed from which it could not be determined whether the policy was an Act Policy or Comprehensive/Package Policy. The Court in National Insurance Company Limited Vs. Balakrishnan and Another, (2013) 1 SCC 731 observed as follows:-

> 24. It is extremely important to note here that till 31-12-2006 the Tariff Advisory Committee and, thereafter, from 1-1-2007 IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies issued by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/package policy". Before the High Court, the competent authority of IRDA had stated that on 2-6-1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under

the “comprehensive policy” and the said position continues to be in vogue till date. It had also admitted that the “comprehensive policy” is presently called a “package policy”. It is the admitted position, as the decision would show, the earlier Circulars dated 18-3-1978 and 2-6-1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the “comprehensive/package policy” irrespective of the terms and conditions contained in the policy. The competent authority of IRDA was also examined before the High Court who stated that the Circulars dated 18-3-1978 and 2-6-1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1-7-2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the Circulars dated 16-11-2009 and 3-12-2009, that have been reproduced herein above, were issued.

25. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated [2011 ACJ 1415 (Del)] thus: (Yashpal Luthra case [2011 ACJ 1415 (Del)] , ACJ p. 1424, para 27)

“27. In view of the aforesaid, it is clear that the comprehensive/package policy of a two-wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for the Motor Accidents Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.”

> 26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in Bhagyalakshmi [(2009) 7 SCC 148 : (2009) 3 SCC (Civ) 87 : (2009) 3 SCC (Cri) 321] and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

32. In the facts of the present case, it is to be noted that Ex.A3 Insurance Policy is an Act Policy. The passenger who travelled in the insured vehicle were not third parties. Since the policy in question was an Act Policy, question of making the appellant Insurance Company liable does not arise.

33. Therefore, this Court is of the view that the appellant-Insurance Company has made out a case for interference. Therefore, this appeal is liable to be allowed.

34. Appellant-Insurance Company is therefore permitted to withdraw the amounts deposited together with interest accrued thereon, by filing suitable application before the Tribunal.

35. At the same time, liberty is given to the 1st respondent/claimant to recover the compensation awarded by the Tribunal from the 3rd respondent together with interest and costs in accordance with law.

36. Accordingly, this Civil Miscellaneous Appeal is allowed with the above observations. No cost. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To:

The Motor Accidents Claims Tribunal,
F.T.C.(Additional District Court) Dharmapuri.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

C.M.A.No.3510 of 2011
and M.P.No.1 of 2010

RR(CO)
SP(16/09/2021)