IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.10.2020	Pronounced on: 03.11.2020

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.846 of 2015
& M.P.No.1 of 2015

The Manager,
Oriental Insurance Company Ltd.,
KFC Building, No.48,
Church Street, Bangalore,
Karnataka - 560 001. ...Appellant

/versus/

1. Aasaithambi, 35 years,
S/o.Govindasamay,
No.82, Malayampatti Post,
R.Pudupatti Via, Rasipuram Taluk,
Namakkal District,
Now at Elur Post,
Namakkal Taluk & District.

2. Subramanian Natraj,
Office at Flat No. "A" Wing Ground Floor,
Anand Deep Building,
Backside Andhra Bank,
Perthesh Nagar, Dombivalli,
Thane District, Maharastra State.
Now residing at Flat No.148,
Ground Floor, Kabilan Gardens,
Kothai Nagar, Erode Salai, Karur. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the award and decree dated 19.09.2014 made in M.C.O.P.No.55 of 2019 on the file of the Motor Accidents Claims Tribunal, Sub Court, Namakkal.

For Appellant : Mr.S.Arun Kumar,

For R1 : No appearance

For R2 : ex parte

JUDGMENT

(The case has been heard through video conference)

Heard the Learned Counsel for the appellant. No representation for the respondent No.1

2. The Appeal is preferred by the Insurance Company being aggrieved by the award of the Motor Accidents Claims Tribunal, Namakkal, to compensate the claimant who travelled as gratuitous passengers and sustained injury when the car capsized after its left front wheel tyre got inflated.

3. On 17.03.2010 while the claimant along with his friends Kannan, Rajasekar and Shanmugam were travelling in the Matiz car bearing registration No.MH-05-H-4971, near Nellukuthiparai, Kamarajar Nagar, Dharmapuri to Salem Road, the left front wheel tyre got inflated and the car capsized. Mr.Rajasekar, who was driving the car sustained fatal injury, died on the spot. The claimant sustained fracture in 4^{th} and 5^{th} right metacarpal bone. He was admitted in the Hospital as inpatient and treated for his injuries from 17.03.2010 to 21.03.2010. Claiming compensation of Rs.5,00,000/-, the petition was filed before the MACT, Namakkal, against the owner of the car and its insurer.

4. The claim petition was resisted on the ground that the car is insured under Act only policy. No additional premium paid for the risk of the passengers. The vehicle being a private passenger car, the liability to pay the occupants not vest with the insurer.

5. However, the Tribunal rejected the defence raised by the insurer. It held the occupant in the car is a third party. The premium collected under basic third party risk covers the claimant/occupant. It awarded a sum of Rs.65,000/- as compensation.

6. In the Appeal, the insurer referring the policy Ex.R-1, Terms and Conditions and the judgments reported in 2009 ACJ 104, 2009 (3) LW 354 and 2013 ACJ 321, has impugned the Tribunal award as erroneous and contrary to law.

7. Heard the Learned Counsel for the appellant. Records perused.

8. The accident occurred while travelling in the car which capsized after the left front tyre got suddenly inflated. The F.I.R marked as Ex.P-1, is against the driver of the car. The perusal of the Insurance Policy Ex.R-1 indicates that no

additional premium is collected to cover the risk of the passengers occupying the car. The premium paid is to cover the third party claim and limited liability for the car owner/driver. Therefore, it is to be tested whether the occupant in the private car is a third party or not.

9. The claimant, who deposed as P.W-1 has stated that the car is presently owned by Kannan but RC still stands in the name of the Subramaniam Nataraj (first respondent in the claim petition) the former owner. The car was driven by Rajasekar. Three others including Kannan, the car owner where the passengers. Ex.R-1 Insurance Policy indicates, the coverage is for the period 03.07.2009 to 02.07.2010(midnight). The accident occurred on 17.03.2010, hence the vehicle had insurance coverage at the time of accident. The owner of the vehicle has paid Premium of Rs.670/- for basic third party cover and Rs.100/- under Personal Accident cover for the owner driver with additional premium of Rs.25/- towards limited liability for paid driver/cleaner/conductor with IMT endorsement No.28. No additional premium for the passenger paid. It is Act only Policy.

10. Under the current dispensation of the Motor vehicle Act, the owners of the vehicle are at liberty to opt for comprehensive policy (Package policy) or Act only policy (liability policy). Under Comprehensive policy apart from basic premium to cover third party risk, additional premium for the risk of occupants and own damages collected. In such case, the insurer is responsible to indemnify the insured against the third party claim and to the extent the terms of the contract limits the claims of the passengers and own damages. Under Act only Policy, only basic premium is collected to cover third party claim. In such case, the insurer is liable to indemnify the owner/insured only the third party claim and to the limited extent the terms of the contract specify for the personal accident cover, if any.

11. In National Insurance Company Ltd. Vs Balakrishnan & Another reported in 2013 SC 473, the Hon'ble Supreme Court has clarified the above position more vividly after referring the clarification circular dated 16.11.2009 issued by Insurance Regulatory and Development Authority (IRDA) to CEOs of all the Insurance Companies restating the factual position relating to the liability of Insurance companies in respect of a pillion rider on a two-wheeler and occupants in a private car under the comprehensive/package policy in following terms:- .

> "21. 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 the 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 the case of Bhagyalakshmi and others v. United Insurance Company Limited and another 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 the 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."

12. Earlier, In Dr.T.V.JOSE Vs. CHACKO P.M ALIAS THANKACHAN & Others reported in 2002 (4) L.W 14, Court held that, in an Act Policy, the occupants of the car are not covered as they do not fall within the ambit of Section 147 of Motor Vehicles Act. The Apex Court has again emphasized similar view in the judgment rendered in Oriental Insurance Company Vs Meena Variyal and others reported in 2007 ACJ 1284. The Constitutional Bench of Hon'ble Supreme Court New India Assurance Vs. C.M. Jaya and Others reported in 2002 (1) ACC 299, has held that Insurance Company may not be made liable out side the scope of statue or Terms of contract. If it is so done, it amounts to re-writing the statue or the contract of the insurance, which is not permissible.

13. Admittedly, in the instant case, the car in which the claimant travelled had Insurance Coverage only against third party claim under Act only Policy. The Tribunal has erred in

holding the claimant is a third party, though he was one of the occupant in the car. Third party means the person unconnected to the insurer or the insured. An occupant in the car not for hire or reward is a gratuitous passenger. He is offered accommodation to travel in the car by the owner of the car explicitly. In the private passenger car which has no Insurance Coverage for the risk of the occupants except the Personal Accident cover for the owner driver, the insurer cannot be held liable to indemnify the other occupants for whom no premium paid by the owner to cover the risk. As per the terms of the contract, the insurer had not agreed to cover the said risk. Hence, the Appellant herein is exonerated from the liability to indemnify the owner of the vehicle against the claim of the passenger. The 2nd respondent herein in whose name the vehicle stand is responsible to pay the compensation awarded by the tribunal.

14. Therefore, the award of the Tribunal, holding the appellant to pay the award amount is set aside. The 1st respondent (claimant) shall proceed against 2nd respondent (owner of the vehicle) for recovery of the award amount. Accordingly, the Second Appeal is Partly-Allowed. The judgment and decree passed by the tribunal in M.C.O.P.No.55 of 2011, dated 19.09.2014 against the appellant is hereby set-aside. The decree is executable against the 2nd respondent (owner of the vehicle). No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

bsm

To:

1.The Motor Accidents Claims Tribunal,
Sub Court, Namakkal.

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

+1cc to Mr.S.Arun Kumar, Advocate SR.No.35727

C.M.A.No.846 of 2015
& M.P.No.1 of 2015

MG(CO)
GMY(05/05/2021)