IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.Nos.90 and 91 of 2015
and
M.P Nos.1 and 1 of 2015

The Branch Manager
M/s.New India Assurance Co. Ltd.,
No.12, New Government Hospital Street,
Gobichettipalayam.

...Appellant
in both appeals /
2nd Respondent in both MCOPs.

Vs

1.Burnabas (Minor)
(Minor respondent rep. by his father and
NF Samvel Arulraj)

2.Jackup Aruldoss

...Respondents
in CMA 90/2015/Petitioner &
1st Respondent in MCOP

1.Joysmith @Joy

2.Jackup Aruldoss

...Respondents
in CMA 91/2015/Petitioner &
1st Respondent in MCOP

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 10.04.2013 made in M.C.O.P.Nos.160 and 161 of 2012 on the file of the Motor Accident claims Tribunal, Sub Court, Gobichettipalayam.

For Appellant in both appeals : M/s.C.Harini for Mr.M.B.Gopalan

For Respondents in both appeals : No Appearance

COMMON JUDGMENT

(The cases have been heard through Video Conferencing)

Heard the learned counsel for the appellant.

2. Though notice was served on the respondents and they engaged a counsel to represent them, there is no representation on their behalf for the past three hearings. Hence, the matter is taken up for final disposal upon hearing the learned counsel for the appellant and on perusing the records.

3. These two appeals are preferred by the Insurance Company being aggrieved by fastening the liability on them to pay compensation to the claimants for their injury sustained in the road accident occurred on 04.12.2010.

4. Minor Burnabas is the claimant in M.C.O.P No.160 of 2012 and Joysmith @ Joy is the claimant in M.C.O.P No.161 of 2012 on the file of the Motor Accident Claims Tribunal, Gobichettipalayam. Common order passed by the Tribunal awarding a sum of Rs.1,03,940 for minor Burnabas, the claimant in M.C.O.P.No.160 of 2012 and Rs.1,33,550/- for Joy, the claimant in M.C.O.P.No.161 of 2012.

5. In these two appeals, the Insurance Company has contended that the vehicle Maruthi 800 car, in which the claimants were travelling as occupants dashed against the cement parapet wall due to rash and negligent driving of the car driver. The car was insured under the appellant Company to cover the risk of the third party. The claimants/occupants of the car are not the third party but occupants as gratuitous passengers. As far as the terms of the policy condition, the vehicle owner had paid premium only to cover the risk of third party claim and not for any other risk. Since there is no additional premium paid for the passengers or occupants, the Insurance Company is not liable to pay any compensation or indemnify the vehicle owner. However, the Tribunal has declined to entertain the said objection and has awarded compensation to the claimants payable by the Insurance Company.

6. Learned counsel appearing for the appellant would submit that the award of the Tribunal is contrary to the policy terms and contractual obligation and also contrary to the legal principles settled in Tilak Singh's case rendered by the Hon'ble Supreme Court reported in 2006 ACJ 1441.

7. Though there is no representation on behalf of the respondents, learned Members of the Bar, who were following the case in the VC hall, had contributed their views regarding the

liability of the Insurance Company, when the coverage falls under the Act only policy. It was submitted by one set of counsels that when IMT does not contemplate split premium under various heads, the premium collected from the insured will not only cover the third party risk but also the occupant in the vehicle. The occupant or the pillion rider should be treated as third party only.

8. Other set of the learned counsels expressed their view that under Section 147 of the Motor Vehicles Act, only risk of third party alone contemplated and any other risk is based on the contract between the parties. Based on mutual agreement between the insurer and insured, all other risk are covered. For extending the additional coverage, the Insurance Company are entitled to collect additional premium. If there is no additional premium paid to cover other risk except third party, the insurer cannot be fastened with liability to pay compensation for the occupier in the passenger car. The judgments rendered by various courts especially, the High Court of Gujarat and Madhya Pradesh as well as the judgment of the Hon'ble Supreme Court and our High Court were cited for reference to buttress their respective views.

9. To cut it short, this Court rely upon the judgment of the Hon'ble Supreme Court rendered in Tilak Singh's case cited supra, which admittedly holds the field till date. This judgment has made it clear that Section 147 of the Motor Vehicle Act, inter alia prescribes compulsory coverage against the death or bodily injured to any passenger of public service vehicle. Proviso appended thereto categorically states that compulsory coverage in respect of drivers, conductors of public service vehicle and employees carried in a goods vehicle should be limited to the liability under the Workmen's Compensation Act.

10. In respect of a private vehicle, the owner of the vehicle has the discretion to insure other risk, which may occur or arise from and out of using a motor vehicle. If the owner of the vehicle has consciously chosen to cover only third party risk and pay the premium for that purpose, neither the passengers, whom he accommodate nor any other person, who will not fall under the category of third party, can expect compensation from the insurer.

11. In this case, the claimants are relatives of the car owner. Accident has occurred due to the negligence of the car driver dashed against the cement parapet wall due to his rash and negligent driving. When there is no contractual obligation between the owner of the car and the Insurance company to cover the risk of the occupants, the premium paid for the third party risk cannot be extended for the passengers travelling in the

car. The Tribunal had failed to apply the principle laid down by the Supreme Court in Tilak Singh and has proceeded to fix the compensation based on the injury and damages suffered by the claimants. In this case, if at all any compensation to be paid to the occupant, the liability to pay can only be upon the car owner, who has accommodated them and not the Insurance Company.

12. Borrowing the words of the Hon'ble Supreme Court in Asha Rani's case, (2003(2) SCC 223) in paragraph No.26, this Court likes to reinforce the legal position as follows:

> "26.In view of the changes in the relevant provisions in 1988 Act vis-a-vis 1939 Act, we are of the opinion that the meaning of the words 'any person' must also be attributed having regard to the context in which they have been used, i.e., a third party'. Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

13. In the light of the above judgments, this Court holds that passengers travelling in a private care having third party risk insurance coverage only not entitled to seek compensation from the insurer. Therefore, the award of the Tribunal fixing the liability on the Insurance Company without insurance coverage is legally erroneous and is not sustainable. Hence, the same is set aside.

14. In the result, both the Civil Miscellaneous Appeals are allowed. No order as to costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
1.The Motor Accident claims Tribunal,
Subordinate Judge,
Gobichettipalayam.

2.The Section Officer,
VR Section , High Court Madras.

CMA Nos.90 and 91 OF 2015

SAI(CO)
RMP(13/05/2021)