IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.Nos.1982 to 1984 of 2016
and
C.M.P.Nos.14321 to 14323 of 2016
and 20793 to 20795 of 2016

C.M.A.No.1982 of 2016

The Oriental Insurance Company Limited,
K.A.K.Complex, First Floor, No.20,
Gandhi Road, Kallakurichi. .. Appellant/2nd Respondent

Vs.

1.Ramalingam
2.Nagarajan
3.Rajiv Gandhi
4.Sivakumar ..Respondents 1 to 4/Petitioners
5.D.Latha ..5th Respondent/1st Respondent
6.Muhamed Yousuf
..6th Respondent/3rd Respondent

Prayer: The Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.20 of 2013, dated 06.02.2016 on the file of the Special District Court, Motor Accident Claims Tribunal, Villupuram.

For Appellant : Mrs.Elveera Ravindran
For Respondents: Mr.L.Rajendran
for R1 to R4

C.M.A.No.1983 of 2016

The Oriental Insurance Company Limited,
K.A.K.Complex, First Floor, No.20,
Gandhi Road, Kallakurichi. .. Appellant/2nd Respondent

Vs.

1.Ramalingam ..1st Respondent/Petitioner
2.D.Latha ..2nd Respondent/Respondent 1
3.Muhamed Yousuf
..3rd Respondent/3rd Respondent

Prayer: The Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.21 of 2013, dated 06.02.2016 on the file of the Special District Court, Motor Accident Claims Tribunal, Villupuram.

For Appellant : Mrs.Elveera Ravindran
For Respondent : Mr.L.Rajendran
for R1

C.M.A.No.1984 of 2016

The Oriental Insurance Company Limited,
K.A.K.Complex, First Floor, No.20,
Gandhi Road, Kallakurichi. .. Appellant/2nd Respondent

Vs.

1.Navammal ..1st Respondent/Petitioner
2.D.Latha ..2nd Respondent/1st Respondent
3.Muhamed Yousuf
..3rd Respondent/3rd Respondent

Prayer: The Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.22 of 2013, dated 06.02.2016 on the file of the Special District Court, Motor Accident Claims Tribunal, Villupuram.

For Appellant : Mrs.Elveera Ravindran
For Respondents: Mr.L.Rajendran
for R1

C O M M O N J U D G M E N T

The Oriental Insurance Company is the appellant before this Court and the common judgment and decree passed in M.C.O.P.Nos.20, 21 and 22 of 2013 are under challenge in these present appeals.

2.The accident occurred on 06.08.2009 at about 4.50 p.m at Pidagam Bridge, the deceased and other two injured persons were travelling in Tata India Car. The deceased died in the Government Hospital and other persons were discharged after taking treatment.

3.The claim petitions were filed and the Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respondent parties. The factum regarding the accident was established by the claimants and with reference to the policy, it was contended by the Insurance Company that it is an Act policy and therefore, there is no coverage with reference to the passengers, who were travelling in the insured vehicle. Admittedly, in the present case insured vehicle is Tata India Car and all the claimants were admittedly travelling in the said car. The evidence placed before the Tribunal reveals that all the claimants were passengers travelling in the said car, which met with an accident. The appellant Insurance Company is able to establish the fact that it is an Act policy and in an Act Policy, there is no coverage with reference to the passengers travelling in the insured vehicle and they have to be treated as gratuitous passengers.

4.The learned counsel for the appellant in support of the said contentions, relied on the judgment of the Hon'ble Supreme Court in the case of General Manager, United India Insurance Co. Ltd., Vs. M.Laxmi and others reported in 2009 ACJ 104, wherein the relevant paragraph Nos.3,6 and 9 are extracted here under :

> "3. Background facts in a nutshell are as follows :
>
> One Ramulu (hereinafter referred to as 'the deceased') died in a vehicular accident on 08.10.1996. Respondent Nos.1 to 3 are his widow, son and father respectively. A claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') claiming compensation of Rs.3,00,000/-. The claimants averred in the claim petition that the deceased and one Mohd. Mohsin were going on a scooter belonging to M.Yadireddy, respondent No.4 in the present appeal. The scooter was being driven by Mohd.Mohsin. At about 7 p.m the scooter hit a bullock cart which was going in the same direction because of rash and negligent driving of the scooter the deceased fell down and sustained fatal injuries. At the time of his death, he was 29 years of age. Compensation was claimed from the owner of the scooter. Present appellant was the insurer which had insured the vehicle in question. The insured remained ex parte. The present appellant filed its counter-affidavit denying all the material allegations. It was pointed out that admittedly, the

policy of insurance was an Act policy and the deceased was a pillion rider and also gratuitous passenger and hence, not a third party and he cannot claim compensation from the insurance company which insured the vehicle. The learned Additional Special Judge for SPE and ACB Cases-cum-Fifth Additional Chief Judge, City Civil Court, Hyderabad (hereinafter referred to as 'the M.A.C.T.') who adjudicated the claim petition, held that the policy was an Act policy in respect of the scooter on the date of the accident, therefore, the insurer had no liability. It was categorically held that unless the policy in question covers even a gratuitous passenger, such person, who met with an accident while going in the vehicle in question and received injuries or his legal heirs, in case of his death following such accident, cannot proceed against the concerned insurance company for any compensation. The compensation payable was fixed at Rs.1,07,436 with 12 per cent interest per annum. It was held that the sum was to be realised from the insured and not from the present appellant.

An appeal was preferred by the claimants before the High Court, which, by the impugned judgment relying on a circular of the Tariff Advisory Committee held that the liability of the insurer was there. The appeal was, accordingly, allowed.

6.There is no dispute that the circular dated 2.6.1986 refers to comprehensive policy. It categorically states that standard form for motor cycle should cover liability to pillion passengers in case of comprehensive policy. As noted by the M.A.C.T., the policy in the instant case was an Act policy.

9.In view of what has been stated by this court in Asha Rani and Tilak Singh cases, the order of the High Court is clearly unsustainable and is set aside and that of the M.A.C.T is restored.

5. In the case of National Insurance Co., Ltd., V. Balakrishnan and another reported in 2013 ACJ 199, the Apex Court held as follows :

> 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, (2009) 7 SCC 148 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 Delhi High Court and we have also reproduced the same.
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> 23. In view of the aforesaid analysis, we think it apposite to set aside the finding of the High Court and the Tribunal as regards the liability of the insurer and remit the matter to the Tribunal to scrutinize the policy in a proper perspective and, if necessary, by taking additional evidence and if the conclusion is arrived at that the policy in question is a comprehensive/package policy', the liability would be fastened on the insurer. As far as other findings recorded by the Tribunal and affirmed by the High Court are concerned, they remain undisturbed."



6. In the case of United India Insurance Co. Ltd., vs. Tilak Singh and others, reported in 2006 ACJ 1441, the Hon'ble Supreme Court made the following observations as under :

> 19. The argument that risk pertaining to a third party would extend to a person other than the

parties to the insurance contract was raised in New India Assurance Co. Ltd., v. Satpal Singh, 2000 ACJ 1 (SC), where after contrasting the language of section 95(1) of the 1939 Act with the provisions of section 147(1) of the 1988 Act this Court held :

> "The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."

20. The view expressed in Satpal Singh's case, 2000 ACJ 1 (SC), however, has been specifically overruled in the subsequent judgment of a Bench of three Judges in New India Assurance Co. Ltd v.Asha Rani, 2003 ACJ 1 (SC). In that case the discussion arose in connection with carrying passengers in a goods vehicle. This court after referring to the terms of section 147 of the 1988 Act, as contrasted with section 95 of the 1939 Act, held that the judgment in Satpal Singh's case (supra) had been incorrectly decided and that the insurer will not be liable to pay compensation. In the concurrent judgment of Sinha J., after contrasting the language used in the 1939 Act with that of the 1988 Act, it has been observed (vide paras 25 and 27)

> "(25). Section 147 of 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of 'public service vehicle'. Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of the public service vehicle and employees carried in a goods vehicle would be limited to the liability under Workmen's Compensation Act. It does not speak of any passenger in a 'goods carriage'.
>
> (27) Furthermore, sub-clause (i) of clause (b) of sub-section (1) of section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any

> person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.”

> 21. In our view, although the observations made in Asha Rani's case, 2003 ACJ 1 (SC), were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant insurance company that it owned no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy and hence it did not cover the risk of death of or bodily injury to gratuitous passenger.”

7. Citing the above judgments, the learned counsel for the appellant reiterated that the policy was marked as a document before the Tribunal. The Tribunal also found that it is an Act policy and however, passed an order of pay and recovery. The Tribunal found that in the said accident a lorry was also involved and therefore, fixed 50% of liability on the appellant Insurance Company and accordingly, pay and recovery is ordered.

8. This Court is of the considered opinion that in an Act policy liability of the Insurance Company cannot be fixed. The Policy being a contract, the terms and conditions are binding on the parties that the claimants were travelling in the insured car, which met with an accident, then there is no reason to pass an order of pay and recovery against the Insurance Company. In all such cases the owner may be held liable and contrarily, as per the terms and conditions of the Act policy, the Insurance Company cannot be held liable. Then, the Tribunal committed an error in granting compensation in favour of the claimants and passing an order of pay and recovery and compensation is to be granted only against the owner of the vehicle and certainly not against the Insurance Company.

9. In the present case, considering the facts and circumstances, the common judgment and decree passed on 06.02.2016 passed in M.C.O.P.Nos.20, 21 and 22 of 2013 are set

aside and the Civil Miscellaneous Appeal Nos.1982, 1983 and 1984 of 2016 are allowed. However, the claimants are at liberty to execute the award of compensation against the owner of the vehicle by following the procedures contemplated. The award amount already been deposited by the appellant Insurance Company is permitted to withdraw the amount with accrued interest by filing an appropriate application. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Villupuram.

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

+3 Ccs to Mrs.Elveera Ravindran, Advocate sr 24057, 24058, 24059
+1 CC to Mr.L.Rajendran, Advocate sr 23995.

C.M.A.Nos.1982 to 1984 of 2016
and
C.M.P.Nos.14321 to 14323 of 2016
and 20793 to 20795 of 2016

BR(CO)
SP(10/09/2020)