IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.11.2020	Pronounced on: 19.11.2020

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.2053 of 2016
& C.M.P.No.15020 of 2016

The Oriental Insurance Company Ltd.,
Vellore. ...Appellant/Respondent

/versus/

Jothi,
W/o.Gopal,
No.508, Tamil Nadu Housing Board,
Krishnagiri Road, Tirupattur. ... Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the award and decree dated 29.04.2011 passed in M.C.O.P.No.244 of 2008, on the file of the Motor Accident Claims Tribunal-cum-Additional District Court, Fast Track Court, Tirupattur, Vellore District.

For Appellant : Mr.R.Siva Kumar

For Respondent : Mr.Pa.Sudesh Kumar

JUDGMENT
(The case has been heard through video conference)

This appeal is filed by the Insurance Company being aggrieved by the award passed by the Motor Accident Claims Tribunal, directing the Insurance Company to pay a sum of Rs.1,10,335/- towards the compensation for the injury sustained by the claimant while the TATA sumo car in which she was travelling got capsized.

2. The brief facts of the case is that, on 01.02.2005 at about 12.00, when the respondent was travelling in TATA sumo car bearing registration No.TN-60-A-3838 driven by her husband, the vehicle got capsized and the claimant sustained fracture on her forearm. The claimant filed claim petition seeking a sum of Rs.3,00,000/- as compensation for the injury and medical treatment.

3. The Learned Counsel appearing for the Appellant/Insurance Company contended that the vehicle got capsized due to rash and negligent driving of the driver, who is none other than the husband of the claimant. The claimant is the owner of the vehicle. As an owner, she has insurance coverage as per the policy condition. The owner is not entitled for any compensation if he or she sustained injury involving his/her own vehicle.

4. On considering the rival submission and the evidence, the Tribunal held that the Insurance policy reveals that the vehicle owner has paid premium for own damage and third party liability besides legal liability premium for driver. The claimant is the owner of the vehicle as per the endorsement found in the R.C Book marked as Ex.P.8. The insured is not a third party. Further, the premium paid under own damage will cover only death and certain type of injury leading to total disability. Since the claimant has not sustained any such injury, she is not entitled for compensation under the policy premium paid for own damage. However, Ex.A.9 Insurance Policy, being a package policy, relying upon the guidelines issued by the High Court in C.M.A.(MD).No.69 of 2010 dated 23.04.2010, had awarded a sum of Rs.1,10,335/- holding that pillion rider or occupant of the car cannot be deprived or denied compensation if the vehicle is covered with package policy.

5. In this appeal, the Learned Counsel for the appellant contended that the Tribunal failed to note that the vehicle stands in the name of the injured claimant and the Personal Accident Insurance Policy covers only when the driver of the vehicle with valid driving license. Compensation to the owner under Personal Accident Policy will be paid only in case of death or permanent total disability like loss of eye sight, limbs.

6. The Learned Counsel appearing for the claimant would submit that the premium of Rs.4,914/- collected for own damage is not restrict to a vehicle damage alone but also to the risk of the owner of the vehicle. The premium collected towards legal liability to the driver covers only in case the vehicle driven by the owner is also not correct. Further, contended that after collecting premium under package policy, the Insurance Company cannot deprive the claimant paying the due compensation. From examination of evidence and documents, it is noted that the claimant had purchased the TATA Sumo car from one Subramaniam on 17.11.2004 and transferred R.C in her name. However, no name transfer was effected in the Insurance Policy. The claimant had sustained injury when the vehicle got capsized. The Insurance Company claims that the claimant is not entitled for claiming any compensation under P.A. cover since the injury

sustained by her does not fall under any of these four categories.

(i). Death.
(ii). Loss two limbs or sight of two eyes or one limb and sight of one eye
(iii). Loss of one limb or sight of one eye
(iv). Permanent total disablement.

7. The injury report reveals that the claimant sustained fracture of left Ribs 3, 4, 5 & 6 and left forearm. The doctor has certified that she has sustained 42% disability. However, these injuries does not fall under any of the category listed above.

8. In the said circumstances, this Court is of the view that even though the claimant is the owner of the vehicle, she was not the driver but only a passenger at the time of accident. The Insurance Policy Ex.P.9 indicates that it a package policy with IMT endorsement 22 & 28. Being a package policy and basic liability is not limited only to third party. Having collected premium for the passenger, the Insurance Company cannot disown his liability. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1. The Motor Accident Claims Tribunal-cum-Additional District Court,
Fast Track Court, Tirupattur, Vellore District.

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

+1cc to Mr.R.Sivakumar, Advocate, sr no.37248

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RMP(11/06/2021)