IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3507 of 2013
and
C.M.P. No.1 of 2013

M/s.United India Insurance Company Ltd.
Rep by its Divisional Manager,
K.P.L. Buildings, No.36,
Katpadi Road, Gandhi Nagar,
Vellore. ..Appellant/Respondent

Versus

Govindaraj ..Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of MV Act 1988 against the order and decree dated 26.04.2013 made in M.C.O.P.No.309 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Vaniyambadi.

For Appellant : Mr.S. Arun Kumar
For Respondent : Mr.S.V. Vasanthakumar

J U D G M E N T

The Insurance company has preferred this appeal against the Judgment and decree in M.C.O.P.No.309 of 2010 dated 26.04.2013 on the file of the Motor Accident Claims Tribunal, Motor Accident Claims Tribunal, Sub Court, Vaniyambadi, questioning the liability on its side.

2. The respondent herein who is the petitioner/claimant and the appellant herein who is the respondent before the Tribunal. For the sake of convenience, the parties herein are referred to in the same ranking as before the Tribunal.

3. The facts of case briefly are as under:

On 05.07.2008 at about 17.30 hours, the petitioner was travelling in his own motor cycle bearing Registration No.TN 23 AT 3700 as a pillion rider, proceeding from KRP Dam to Vaniyambadi, the said vehicle was driven by his friend Mr. Babu in a rash and negligent manner, due to which, the bike was overturned on the road. Due to the impact, the petitioner was thrown away on the road and he sustained grievous injuries all over the body. The petitioner was admitted as in-patient in the Government Head Quarters Hospital, Krishnagiri and thereafter, the petitioner was admitted for further treatment in C.M.C Hospital, Vellore, as in-patient. After discharge from the above Hospital, the petitioner was taken periodical treatment in the private Hospital, at Vaniyambadi. Due to the injuries sustained in the accident, the petitioner has preferred a claim petition in M.C.O.P.No.309 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Vaniyambadi. Based on the evidence and documents placed before the Tribunal, the Tribunal has given findings that the accident occurred only due to the rash and negligent driving on the part of the driver of the vehicle and since it is insured with the appellant/Insurance Company, the appellant/the Insurance company was directed to pay the compensation a sum of Rs. 2,23,000/- (Rupees Two Lakh and Twenty Three Thousand Only) to the petitioner/respondent herein.

4. Being aggrieved by the aforesaid award, the appellant/Insurance company has preferred the present appeal questioning its liability fixed by the Tribunal.

5. The learned counsel appearing for the appellant/Insurance company would submit that the petitioner/claimant as owner of the vehicle involved in the said accident is not entitled to claim any compensation for injuries sustained by him while the owner's risk was not covered by any Insurance policy or assured by any Insurance company. Hence, the Insurance company/appellant herein has denied the liability to pay any compensation claimed by the petitioner/respondent herein and has sought for setting aside the Judgment and decree passed by the Tribunal in M.C.O.P. No.309 of 2010 dated 26.04.2013. Further, the learned counsel would contend that the Tribunal has not considered the fact that petitioner/respondent herein claimed himself as the owner of the said vehicle bearing Registration No. TN 23 AT 3700 and not a third party. The other aspect which was not considered by the Tribunal is that Chapter XI of the Motor Vehicles Act, 1988, is only in respect of "Insurance of Motor Vehicles against Third Party Risks" and Section 147(1) of the Motor Vehicles Act 1988, does not envisage any cover in respect of the owner of the Vehicle viz., the petitioner/respondent herein. The Tribunal failed to properly appreciate the evidence of R.W.1- official of the Insurance Company, and Ex.R1 - Copy of the Insurance Policy and Ex.R2- Copy of the Insurance Law.

6. The learned counsel appearing for the appellant, in support of his contention, has placed reliance on the Division Bench Judgment of this Court reported in 2017 (2) TN MAC 674 (DB) in the case of "Divisional Manager, United India Insurance Co. Ltd, Vs. R. Rekha and others, the relevant portion of the Judgment is extracted below:

> "17. The learned Counsel for the IRDA has also brought to the notice of this Court the Indian Motor Tariff, which came into effect from 30.06.2002,

particularly, in relation to Personal Accident Cover. According to the learned Counsel, on payment of Additional premium, the Insurance company undertakes to pay Compensation to the insured on the scale provided for the bodily injury, as follow:

Details of Injury	Scale of compensation
(i) Death	100%
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye.	100%
(iii) Loss of one limb or sight of one eye	50%
(iv) Permanent Total Disablement from injuries other than named above	100%

"18. Thus, according to the learned counsel, based on the Indian Motor Tariff, the Insurance Companies collect Rs.50 for the owner-cum-driver in a case of Two wheeler and they are assured with compulsory personal Accident Cover to an extent of Rs.1,00,000/- subject to the above referred table. The tariff for the above coverage is fixed by IRDA in consultation with Insurance companies. It is further submitted that under Sections 163-A, 165 & 166 of Motor Vehicles Act, there is an impediment that a claim can be laid by a victim against the Owner or Driver or Insurance company, but no where the Act enables the Owner/insured to maintain a claim against his Insurer under Section 147 of the Motor Vehicles Act.

....

26. As far as the present case is concerned, the deceased was travelling as a Pillion rider in the Two-wheeler owned by him. Admittedly, the deceased himself was the owner of the Two-wheeler. At the time of the accident, the driver of the Two-wheeler suddenly applied brake and hit a Cyclist, which led to the accident. No other Motor Vehicle has been involved in this case. Thus, the accident did not involve any other motor Vehicle other than the one in which the deceased was travelling as a Pillion Rider. Therefore, the liability of the Insurance company is only to the extent of indemnification of the insured against the third person or in respect of damages of property. While so, the Insurance company cannot be fastened with any liability under the provisions of the Motor Vehicles Act for the

death of the deceased who himself was the owner of the vehicle and when no other motor Vehicle was involved in this case. Therefore, the question of the Insurer being liable to indemnify the deceased/owner of the vehicle does not arise. Since the deceased himself was the owner of the Two-wheeler and not a third party, the Claim petition filed by the Claimants will not come within the purview of Section 146 or 147 of the Motor Vehicles Act for the purpose of payment of compensation. Therefore, we hold that the impugned Judgment and Decree of the Tribunal cannot be sustained. The appeal filed by the Insurance company deserves only to be allowed. At the same time, it is needless to mention that the claimants are entitled for payment of Rs.1,00,000/- only towards Personal Accident Cover proportionate to the Premium paid by the deceased.

7. On the other hand, the learned counsel for the respondent would submit that the petitioner was awarded the compensation after perusing the entire oral and documentary evidence placed before the Tribunal. The Tribunal has confirmed that the two wheeler was driven in a rash and negligent manner by the friend of the petitioner not by the petitioner/respondent herein. Due to which, the FIR was also filed against the friend of the petitioner not against the petitioner. In view of the rash and negligent driving of the friend of the petitioner and not by the petitioner who was the riding the two wheeler as Pillion rider at the time of the accident, the Tribunal has rightly awarded the compensation to the petitioner/respondent herein after considering the injuries sustained by the petitioner/respondent herein and the facts and circumstances of the case. Since there is no infirmity in the award passed by the Tribunal, this Court need not interfere with the compensation awarded to the petitioner/respondent herein.

8. Heard the learned counsel on either sides. On the side of the petitioner/respondent herein, P.W.1 -the petitioner/respondent herein and the P.W.2 Dr. Selvanathan were examined and the documents of Ex.P1 to Ex.P8 were marked. On the side of the respondent/appellant

herein-Insurance Company R.W.1- Official of the Insurance Company was examined and the documents R.W.1 and R.W.2 were marked to support their side.

9. On a perusal of the award and oral and documentary evidence placed before this Court, it is seen that as per Division Bench of this Court in the Judgment dated 26.10.2017 in "The Divisional Manager, M/s. United India Insurance Company Limited Vs. R. Rekha and others, the compensation shall be payable as per the schedule stated in the aforesaid

Division Bench Judgment of this Court whereas the the injuries sustained by the petitioner/respondent herein would not come under the purview of the schedule stated in the aforesaid decision of the Division Bench. Further, as discussed in Paragraph No.26, the petitioner was travelling as a Pillion rider in the two wheeler owned by him. It is admitted fact that the injured himself was the owner of the two wheeler. In view of the rash and negligent driving of the friend of the petitioner, the petitioner has sustained grievous injuries due to his own two wheeler was capsized on the road. In this accident, no other vehicle was involved. Thus, the accident did not involve any other motor vehicle other than the one in which the injured/petitioner was travelling as a Pillion rider. Therefore, the liability of the Insurance company is only to the extent of indemnification of the insured against the third person or in respect of damages of property. While so, the Insurance company cannot be fastened with any liability under the provisions of the Motor Vehicles Act for the injuries sustained by the petitioner in the accident who was the owner of the vehicle and when no other motor Vehicle was involved in this case. Therefore, the question of the Insurer being liable to indemnify the injured/owner of the vehicle does not arise. Since the injured himself was the owner of the Two-wheeler and not a third party, the Claim petition filed by the Claimant will not come within the purview of Section 146 or 147 of the Motor Vehicles Act for the purpose of payment of compensation. Therefore, this Court holds that the impugned Judgment and Decree of the Tribunal cannot be sustained. The appeal filed by the Insurance company deserves only to be allowed. In view of the above, It is made clear that the respondent is not entitled to the award amount passed by the Tribunal. If the appellant/Insurance Company has made any part amount of the award before the Tribunal as per the direction of this Court, the appellant/Insurance company is permitted to withdraw the same with interest from the date of the deposit.

10. In view of the aforesaid decision and discussion, this Civil Miscellaneous Appeal is allowed. The Award and Decree dated 26.04.2013 made in M.C.O.P. No.309 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Vaniyambadi, is set aside. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-CI)

//True Copy//

Sub Assistant Registrar

Lbm

To

1.The Motor Accident Claims Tribunal
Sub Court, Vaniyambadi.

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

+1cc to Mr.Arunkumar, Advocate, S.R.No. 11027
+1cc to Mr.Vasanthakumar, Advocate, S.R.No. 11268

C.M.A.No.3507 of 2013
and
C.M.P. No.1 of 2013

MG(CO)
GN(28/04/2021)