

N THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 02-09-2020

Judgment Delivered on : 16-10-2020

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Civil Miscellaneous Appeal No. 3595 of 2019
and
C.M.P.No.20788 of 2019

The Branch Manager
The New India Assurance Co. Ltd
Paramathy Road
Namakkal Town and Taluk ... Appellant

Versus

1. G. Sumathi
2. Minor Preethy
3. Minor Sanjai
Minors rep. by their next friend
guardian/mother G. Sumathi
4. Marammal
5. R. Madesh ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act against the Judgment and Decree dated 14.09.2018 passed in M.A.C.T.O.P. No. 552 of 2015 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Namakkal.

For Appellant : Mr. M. Krishnamoorthy
For Respondents : Mr. Paramasiva Doss
for Mr. S. Senthil for RR1 to 4
No appearance for R5

JUDGMENT

R.Subbiah, J

The appellant/Insurance Company has filed this appeal questioning the correctness and/or validity of the Judgment dated 14.09.2018 passed by the Tribunal in MCOP No. 552 of 2015.

By the said Judgment, the Tribunal determined the compensation amount payable to the claimants at Rs.36,11,545/- and directed the appellant/Insurance Company to pay the same.

2. The respondents 1 to 4/claimants have filed MCOP No. 552 of 2015 before the Tribunal by contending that on 30.12.2014 at about 7.00 am, the deceased Periyasamy, his wife/first claimant and seven others were travelling in a Toyota Qualis Car bearing Registration No. TN 22 P 5117. When the car was proceeding on the Bangalore Bye Pass Road, near Kandampatti at Salem, the driver of the car drove it in a rash and negligent manner. While so, the left side back wheel tyre of the car bursted. In the impact, the driver of the car lost control and crashed the car against the centre median divider of the road. As a consequence thereof, the car capsized due to which the deceased Periyasamy sustained grievous injuries. Immediately, the deceased was admitted in Dharan Hospital, Seelanaickenpatti, Salem where he died inspite of treatment. According to the claimants, the deceased Periyasamy was 39 years old at the time of accident. He was the owner of six heavy Ashok Leyland Torres Truck and was doing transport business. It is further stated that the deceased was earning Rs.60,000/- per month and due to his death, the family lost the sole bread winner. According to the claimants, the fifth respondent herein is the owner of the car and the appellant herein is the insurer of the car. It is their contention that the accident had occurred due to the rash and negligent driving of the driver of the fifth respondent herein and therefore, the owner and insurer of the car are jointly and severally liable to pay compensation of Rs.40 lakhs claimed in the claim petition.

3. Repudiating the averments made in the claim petition, the appellant/Insurance Company has filed a counter statement before the Tribunal. It is the defence of the appellant that contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy, as also the quantum of premium payable for insuring the vehicle, depends not only upon the capacity of the vehicle, but also the purpose for which the vehicle is being used. It was contended that by taking an "Act Policy" the owner of the vehicle fulfils his statutory obligation as contained under Section 147 of The Motor Vehicles Act. Therefore, the liability of the insurer is either statutory or contractual. If it is contractual, its liability extends to the risk covered by the Insurance Policy. If additional risks are sought to be covered, additional premium ought to have been paid. But in the present case, the owner of the Vehicle has taken only an "Act Policy". Further the deceased who was travelling in a private car is not a third party as per the terms and conditions of the insurance policy. Therefore, the claimants are not eligible for any compensation

from the insurer. Even according to the claimants, the accident was as a result of bursting of the tyre of the car. If it is so, no negligence can be attributed as against the driver of the car. In any event, in the above stated facts, the claimants are not entitled for any compensation from the insurance company and therefore, the appellant herein prayed for dismissal of the Claim Petition.

4. Before the Tribunal, the first claimant examined herself as P.W.1 and Exs.P-1 to P-22 were marked. On behalf of the appellant/Insurance Company, one Gomakal was examined as R.W.1, but no document was marked on their side. The Insurance Policy in question was marked before the Tribunal as Ex.C-1. The Tribunal, on a consideration of the oral and documentary evidence, concluded that due to the rash and negligent driving of the driver of the car, the accident had occurred. By pointing out Ex.P3, Motor Vehicle Inspector Report, the Tribunal concluded that there was no mechanical defect which developed in the car at the time of accident and the accident was as a result of the rash and negligent driving of the driver of the car. The Tribunal also observed that the Insurance Policy taken for the car was in force as on the date of accident. Further, the third party as defined in the insurance policy is the one who claim damages on the basis of the insurance policy. Therefore, the Tribunal mulcted the insurance company with the liability to pay the compensation determined at Rs.36,11,545/- together with interest at 7.5% per annum. Aggrieved by the same, the present appeal has been filed by the Insurance Company.

5. The learned counsel for the appellant/Insurance Company vehemently contended that there was no other motor vehicle involved in the accident. The accident was as a result of the negligence attributable on the part of the driver of the car, who hit the vehicle in the centre median divider. In the impact, the car capsized and the deceased, who was one of the occupants of the car, died. The learned counsel for the appellant also submitted that based on the complaint given by the first claimant, who was also one of the occupants of the car, the case in Crime No. 858 of 2014 was registered for the offences under Sections 279, 304 (A) of IPC. After investigation, the complaint was closed as "mistake of fact" purportedly on the ground that the accident was as a result of bursting of the rear side tyre of the car. Above all, the learned counsel for the appellant contended that as per the Insurance Policy under Ex.R-1, a sum of Rs.4,109/- was paid towards third party premium after adding Rs.508/- towards service tax. As per the policy of insurance, the deceased was admittedly a gratuitous passenger and no premium was paid for covering the risk of such gratuitous passenger. Further, the private car, which was involved in the accident, was covered

with an Act liability (liability only/statutory policy) and no premium was paid for gratuitous passenger or occupants of the car. When the deceased is not a third party, as defined under the terms of the Insurance Policy, the appellant insurance cannot be mulcted with the liability to pay the compensation amount. In this context, the learned counsel for the appellant placed reliance on the decision of a Division Bench of this Court in the case of New India Assurance Co., Limited Vs. L.Agnes and others, reported in 2013 (1) TN MAC 631, in which, it was held that the occupant of a car cannot be construed as a third party. It was also held that the occupants of the car are entitled to get compensation from the insurer in which they travelled only on account of additional premium that is payable by the owner of the vehicle and not in the capacity of third parties.

6. The learned counsel for the appellant also relied on the Division Bench judgment of this Court in the case of The New India Assurance Co., Ltd., Vs. S. Krishnasamy and others, reported in 2015 (1) TN MAC 19 (DB), wherein it has been held that the occupant of a car is not a third party and for the death or bodily injury of such a person, the insurance company cannot be held liable or responsible.

7. The learned counsel for the appellant also relied on a decision of the Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. Sudhakaran and others, reported in 2008 (2) TN MAC 16 (SC) as well as the decision in the case of United India Insurance Company Ltd., vs. Tilak Singh and others reported in 2006 (1) TN MAC (SC) 36, wherein it has been held that a passenger of a two wheeler (pillion rider) is not a third party. It was further held that Section 147 of The Motor Vehicles Act can be pressed into service in regard to reimbursement of the claim of a third party. It was also held that the liability of the Insurance Company in a case of this nature, cannot be extended to a pillion rider of the motor vehicle under regular amount of premium by extending the legal obligation imposed on the Insurance Company to pay the compensation to such pillion rider. Thus, it was held that a pillion rider in a two wheeler, cannot be treated as a third party, when the accident had taken place owing to rash and negligent riding of the driver of the two wheeler and not on the part of the driver of another vehicle. The ratio laid down in the aforesaid decision squarely applies to the facts of this case. In the present case also, the deceased was one of the occupants of the car, which had crashed over the centre median divider on the road. When the deceased was one of the occupants of the car, he cannot be regarded as a third party and Section 147 of the Motor Vehicles Act is only with regard to the liability of the Insurance Company to pay the claim made by a third party and hence, the

Insurance Company cannot be mulcted with any liability to pay compensation to the claimants.

8. The learned counsel for the appellant also placed reliance on a decision of the Supreme Court in the case of United India Insurance Co., Ltd. Vs. M.Laxmi and others reported in 2009 ACJ 104, wherein it has been held that Insurance Company cannot be made liable or responsible for payment of compensation to a gratuitous pillion rider when the vehicle was covered under the "Act Policy".

9. By pointing out the above decisions, the learned counsel for the appellant/Insurance Company contended that the policy in question is an "Act Policy" as per which the liability of the insurer is to cover the risk of a third party. In the present case, the deceased being an occupant of the car, cannot be construed as a third party, warranting the appellant/insurance company to pay compensation to the claimants. The learned counsel for the appellant therefore prayed for allowing this appeal.

10. On the above contention, we have heard the learned counsel appearing for the claimants/respondents 1 to 4/claimants. According to the learned counsel for the respondents 1 to 4/claimants, the appellants are estopped from questioning the liability fastened on them by the Tribunal on the ground that the deceased was a gratuitous passengers and the Act Policy does not cover the deceased as an occupant of the car. It is his contention that in the very same accident, one Shanthi had suffered injuries and she has filed MCOP No. 205 of 2015 seeking compensation. The said MCOP No. 205 of 2015 was settled in the Lok Adalat and an award dated 12.12.2015 was passed in MCOP No. 205 of 2015. Thus, the appellant had accepted their liability to pay compensation in respect of the co-passenger Shanthi, while so, denying their liability to pay compensation to the claimants for the death of the deceased, is unsustainable. By referring to Section 147 (1) (b) of The Motor Vehicles Act, the learned counsel appearing for the respondents 1 to 4/claimants further contended that even the "Act Policy" encompasses within its fold any person who suffered bodily injury or death by reason of use of the vehicle in a public place as a third party. The usage of the words 'third party' in Section 145 of the Act unambiguously and explicitly makes it clear that it covers all other than the driver, authorised representative of the owner and also the owner of the vehicle. There is nothing in the said Act that specifically excludes the liability of the Insurance Company from paying compensation to a passenger who travelled in a vehicle.

11. The learned counsel appearing for the respondents 1 to

4/claimants also contended that the decision of the Supreme Court in the case of United India Insurance Corporation Vs. Tilak Singh, reported in 2006 (1) TN MAC 36 (SC), relied on by the counsel for the appellant will not be applicable to this case. It is his contention that in that case the Honourable Supreme Court had an occasion to consider whether the passenger in the car or a gratuitous passenger in the goods carriage vehicle qualifies to be a third party as per Section 147 of The Motor Vehicles Act. On the contrary, the learned counsel for the respondents 1 to 4/claimants placed reliance on the decision of a Division Bench of this Court in the case of Royal Sundaram Vs. A.Meenakshi, reported in 2009 (1) TN MAC 249, wherein the Division Bench of this Court directed the Tariff Advisory Committee to ensure that the insurance policies cover those passengers who are travelling in the vehicle and also make provisions that such passengers are also covered under the "Act Policy".

12. The learned counsel appearing for the respondents 1 to 4/claimants also placed reliance on a decision of the Supreme Court in the case of Anjana Shaym vs. Oriental Insurance Company Limited, reported in II (1996) CPJ 18 SC, wherein, it was held that in cases where the passenger travelling in a public transport, were covered by the premium paid to the seat available in the vehicle and in all the above cases, the claimants were over seated than the capacity for the seats, the Insurance Company cannot contend that there is a violation of policy condition. In such circumstances, the over-seated passengers cannot be deprived of compensation merely on the ground that the premium was not paid to such travellers. By quoting the above decision, the learned counsel for the respondents 1 to 4/claimants contended that the deceased in this case was an innocent occupant of the car and on his death, his legal heirs should not be left in the lurch without any payment for compensation from the Insurance Company. Even otherwise, if the contention of the appellant/Insurance Company is accepted and the appellant is exonerated from the liability of paying compensation, still, the appellant can be directed to pay the compensation and recover it from the owner of the vehicle. Therefore, the learned counsel appearing for the respondents 1 to 4/claimants prayed for dismissal of the appeal.

13. We have heard the learned counsel for both sides and perused the materials placed on record. As per the averments of the claimants, the car, in which the deceased, PW1 and others travelled on the fateful day, capsized, after hitting the centre median divider in the road. It is also an admitted fact that the rear side tyre of the car bursted when the car was proceeding near Kandampatti at Salem. It is also an admitted fact that no other motor vehicle is involved in the accident. It is in such

an accident, due to capsizing of the car and its impact, the deceased sustained grievous bleeding injuries and he died as a result of such injuries. Thus, it is an undisputed fact that the deceased was one of the occupants of the car and he is not a third party as defined in the terms and conditions of the Insurance Policy under Ex.R-1. When the deceased is not a third party, the Insurance Policy cannot get extended to cover the risk of such occupants of the car. Furthermore, it is substantiated by the appellant that the Insurance Policy in question is only an "Act Policy", which will cover only the risk that may be confronted by a third party to the vehicle and not to the occupant of the vehicle. The coverage for an occupant of the vehicle can be extended upon payment of additional premium by the owner of the car. In the present case, even as admitted by the claimants, the owner of the car has not remitted any additional premium to cover the risk that may be confronted by the occupants of the car. In such circumstances, we are of the view that the Tribunal erred in mulcting the appellant/Insurance Company with the liability to pay the compensation to the claimants.

14. Even though several decisions were relied on by the learned counsel for the appellant in this appeal, we are fortified by the decision of the Supreme Court in the case of United India Insurance Co Ltd. Vs. Tilak Singh and others, reported in 2006 (4) Supreme Court Cases 404 = 2006 (1) TN MAC 36 (SC). In that case, the issue that had arisen for consideration of the Supreme Court is whether a statutory Insurance Policy under the Motor Vehicles Act, 1998, intended to cover the risk to life or damage to properties of third parties, would cover the risk of death or injury to a gratuitous passenger carried in a private vehicle. The Supreme Court in that case held that the Insurance Company owe no liability towards the injuries suffered by a pillion rider, as the insurance policy was a statutory policy and it does not cover the death of or bodily injury to a gratuitous passenger. The ratio laid down by the Supreme Court in the said decision, squarely applies to the facts of this case. In the present case, the Policy in question is an "Act Policy" and in the absence of remittance of any additional premium by the owner of the car, the appellant/Insurance Company cannot be statutorily made liable to pay the compensation for the deceased, who was an occupant of the car.

15. As we have held that the appellant/Insurance Company is not required or statutorily liable to pay compensation to the respondents 1 to 4 / claimants, there is no necessity for us to go into the question relating to quantum of compensation, particularly when the owner of the vehicle has not chosen to appear before this Court.

16. In the light of the above, we set aside the Judgment and Decree dated 14.09.2018 passed in M.A.C.T.O.P. No. 552 of 2015 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Namakkal and exonerate the appellant/Insurance Company from their liability to pay the compensation amount to the respondents 1 to 4/claimants. It is open to the respondents 1 to 4/claimants to proceed against the owner of the Car/fifth respondent herein to recover the compensation amount for the death of the deceased. The Civil Miscellaneous Appeal filed by the appellant-Insurance Company is allowed to the extent indicated above. No costs. Consequently, C.M.P.No.20788 of 2019 is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

cs/rsh

To

1. The Presiding Officer,
The Motor Accidents Claims Tribunal
(Principal District Judge) at Namakkal.
2. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No. 34540

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CMA No. 3595 of 2019

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