IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.902 & 903 of 2013
and
M.P.Nos.1, 1 of 2013

The Branch Manager,
The Oriental Insurance Company Limited,
The Branch Office,
T.G.M.A. Building, 1st Floor,
J.C. Road, Tumkur - 572 101.
Karnataka State .. Appellant (in both the appeals)/ 2nd Respondent in both the MCOPs

Vs.

1.Sathyakumar .. 1st Respondent (in C.M.A.No.902 of 2013)/ Petitioner in MCOP.No.179/09

1.Thimmarayan .. 1st Respondent (in C.M.A.No.903 of 2013)/ Petitioner in MCOP.No.282/2009

2.S.M.Gaffran .. 2nd Respondent (in both the appeals)/ 1st Respondent in both the MCOPs

(R2 remained exparte before Tribunal)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the common Judgment and Decree dated 17.05.2011 made in M.C.O.P.Nos.179 & 282 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri.

For Appellant : Ms.Harini
for Mr.N.Vijayaraghavan
(in both the appeals)

For R1 : Mr.D.Ramesh Kumar
(in both the appeals)

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

The matter is heard through “Video Conferencing”.

2.These Civil Miscellaneous Appeals have been filed against the common award dated 17.05.2011 made in M.C.O.P.Nos.179 & 282 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri.

3.Both the appeals arise out of the same accident and common award and hence disposed of by this common order.

4.The appellant is the 2nd respondent in M.C.O.P.Nos.179 & 282 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri. The 1st respondent in both the appeals are the claimants in M.C.O.P.Nos.179 & 282 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri respectively. They filed the said claim petitions respectively claiming a sum of Rs.5,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 02.05.2007.

5.According to 1st respondent in both the appeals, on 02.05.2007 at about 00.30 hours, while they were travelling in a Tata sumo car bearing Registration No. KA 17 A 0009 belonging to the 2nd respondent on Salem - Dharmapuri NH road near Palani Sawmill at Nallampalli, the driver of the Tata sumo drove the same in a rash and negligent manner and dashed against the lorry bearing Registration No. KA 01 B 1629, which was coming in the opposite direction and caused the accident. In the accident, the 1st respondent in both the appeals sustained multiple grievous injuries all over the body. Immediately after the accident, the 1st respondent in both the appeals were taken to Government Head Quarters Hospital, Dharmapuri for first aid treatment. Thereafter, they were shifted to St.John's Hospital, Bangalore and then they took treatment at a Private Nursing Home, Dharmapuri. Therefore, they filed the above said claim petitions claiming a sum of Rs.5,00,000/- each as compensation for the injuries sustained by them against the 2nd respondent and appellant, being the owner and insurer of the Tata sumo respectively.

6.The 2nd respondent-owner of the Tata sumo remained exparte before the Tribunal.

7.The appellant-Insurance Company filed separate counter statements in both the claim petitions and denied all the averments made by the 1st respondent in both the appeals. According to the appellant, the accident has not occurred as alleged by the 1st respondent in both the appeals. The driver of the lorry bearing Registration No. KA 01 B 1629 drove the same in a rash and negligent manner and dashed against the Tata sumo and caused the accident. Since the accident has occurred due to head on collision of two vehicles, the owner and insurer of the lorry bearing Registration No. KA 01 B 1629 have to be impleaded as necessary parties. The Tata sumo car was insured as private car and permission was granted for carrying its owner and his family members. But the 2nd respondent violated the policy conditions by hiring the Tata sumo. Passengers other than the owner and his family members were allowed to travel in the Tata sumo at the time of accident. Hence, the appellant is not liable to pay any compensation to the 1st respondent in both the appeals. The driver of the Tata sumo belonging to 2nd respondent was not possessing valid driving license and the 2nd respondent has not informed about the accident to the appellant. The 2nd respondent's Tata sumo was not having valid RC, FC and permit. The 1st respondent in both the appeals have to prove their age, avocation and income by producing valid documents. The injuries sustained by the 1st respondent in both the appeals are only simple in nature and the injuries mentioned in the claim petitions are not correct. In any event, the quantum of compensation claimed by the 1st respondent in both the appeals are highly excessive and prayed for dismissal of both the claim petitions.

8.Before the Tribunal, the 1st respondent in C.M.A.No.902 of 2013 was examined as P.W.1, 1st respondent in C.M.A.No.903 of 2013 was examined as P.W.2, Dr.S.Krishnakumar was examined as P.W.3 & P.W.4 and 12 documents were marked as Exs.P1 to P12. The appellant examined one Rathinavelu, Assistant from the appellant-Insurance Company as R.W.1 and copy of the Insurance Policy was marked as Ex.R1.

9.The Tribunal considering the pleadings, oral and documentary evidene, held that the driver of the Tata sumo belonging to 2nd respondent was responsible for the accident and directed the 2nd respondent and appellant to jointly or severally pay a sum of Rs.1,07,086/- and Rs.1,11,000/- respectively as compensation to the 1st respondent in both the appeals.

10.Against the said common award dated 17.05.2011 made in M.C.O.P.Nos.179 & 282 of 2009, the appellant-Insurance Company has come out with the present appeals.

11.The learned counsel appearing for the appellant contended that the Tribunal erred in directing the appellant to pay the compensation to the occupants in a private car which was covered under the Act only policy. The policy being an Act policy, did not cover the liability of the owner and occupants. The Tribunal failed to appreciate that such occupants are not required to be covered under Motor Vehicles Act in a private car. The Tribunal ought to have exonerated the appellant following the judgment of the Hon'ble Apex Court reported in 2006 ACJ 1441, [United India Insurance Company Limited, Shimla Vs. Tilak Singh and others], and prayed for setting aside the award passed by the Tribunal.

12.Per contra, the learned counsel appearing for the 1st respondent in both the appeals contended that 1st respondent in both the appeals have traveled in the Tata sumo belonging to 2nd respondent and insured with appellant. The accident has occurred due to rash and negligent driving by the driver of the Tata sumo belonging to 2nd respondent. At the time of accident, insurance policy was in force. In view of the same, the appellant as insurer of the Tata Sumo is liable to pay the compensation and there is no reason to interfere with the award of the Tribunal directing the appellant and second respondent to pay the compensation and prayed for dismissal of both the appeals.

13.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent in both the appeals and perused the materials on record.

14.From the materials available on record, it is seen that it is the contention of the 1st respondent in both the appeals that while they were travelling in the Tata sumo belonging to 2nd respondent insured with appellant, due to rash and negligent driving by the driver of the Tata sumo, the accident occurred. At the time of accident, the Tata sumo was insured with the appellant and hence, they claimed compensation against the 2nd respondent and appellant, being the owner and insurer of the Tata sumo respectively. On the other hand, it is the contention of the appellant that Tata sumo belonging to 2nd respondent is a private car and it was covered under Act only policy. In view of the Act policy, the appellant is not liable to pay any compensation for the claim of the occupants of the car. The appellant has examined one of its employees as R.W.1 and marked copy of the policy as Ex.R1 and proved that the policy issued for the offending vehicle is only an Act policy. The Tribunal did not frame any issue with regard to liability. The Tribunal having discussed about the contention of the appellant, failed to give any finding with regard to liability. The 1st respondent in both the appeals have not denied that the policy issued was only an Act policy and they travelled in the private car. The Hon'ble Apex Court considered the liability of the Insurance Company in the judgment reported in 2006 ACJ 1441, [United India Insurance Company Limited, Shimla Vs. Tilak Singh and others], relied on by the learned counsel appearing for the appellant and held that pillion rider travelling in a two wheeler is not a third party and he is only gratuitous passenger when the Policy issued by the Insurance Company is Act Policy. In paragraph No.21, it has been held as follows:

> "...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 owed 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."

14(i).Again the said issued was considered by the Hon'ble Apex Court in the judgment reported (2013) 1 SCC 731, [National Insurance Company Limited Vs. Balakrishnan and another]. In the said judgment, the Hon'ble Apex Court held that the occupants of four wheeler is not covered under Act Policy issued by the Insurance Company. Only in comprehensive/package policy liability would be covered. In paragraph No.26, the Hon'ble Apex Court held as follows:

> "..26.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."

14(ii).A Division Bench of this Court in the judgment reported in 2015 (1) TNMAC 19 (DB), [New India Assurance Company Limited, Divisional Office, 2, Main Road, Dindigul - 1 Vs. S.Krishnasamy and others], held that Insurance Company is not liable to pay compensation for the occupant of the car, when the policy is ony an Act Policy. This Court at paragraph Nos.12, 18 & 19, held as follows:

> "...12.In this case, the deceased was only an occupant of the vehicle and he was not the driver or owner of the insured vehicle and he is only the occupant of the private car and except that, there is other evidence produced on the side of the Respondents 1 to 5/dependents of the deceased. Further, the deceased was travelling in the Car belonging to one Valliappan as an occupant. Since the deceased is only an occupant of the Private Car, he cannot be termed as '3rd party' to the Insurance Company. Admittedly, the Car, which was involved in the accident, was insured with the Insurance Company under Act Policy and no premium was paid for gratuitous passenger/occupant and it is not a comprehensive policy.
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> 18.In view of the rulings cited above, we are of the considered view that since, the Policy is only an Act Policy issued by the Appellant-Insurance Company to the Insurer and the deceased Palanisamy was only an occupant of the Private Car, cannot be considered as 'Third Party' of the vehicle and the Policy is covered risks to the third party alone. Hence, the deceased was only the occupant of the Private Car and the said Policy will not cover the risk of the deceased. The Doctrine of Pay and Recovery cannot be applied to the facts of the case, since the Appellant-Insurance Company is not liable to pay the compensation. Hence, pay amount to the Claimants and then recover the same from the owner of the vehicle involved in the accident cannot be ordered and in view of the above, the rulings cited on the side of the Respondents 1 to 5/Claimants are not applicable to the facts of the present case.

> 19.Hence, we are of the considered view that since the Act Policy did not cover the risk, the Insurance Company is not liable to pay any Compensation to the Claimants/dependents of the deceased and the owner of the vehicle alone is liable to pay damages to the Claimants, as the accident occurred due to rash and negligent act of the driver of the vehicle."

14(iii).The Hon'ble Apex Court in the judgment reported in (2013) 1 SCC 731, cited supra, has considered the scope of this Act policy and Package policy. After considering the same, the Hon'ble Apex Court has held that when policy issued in that case is only an Act policy, Insurance Company is not liable to pay compensation for the claim of the occupants of the car when the accident is occurred due to rash and negligent driving by the driver of the car in which the claimant was travelling.

15.The ratio in the above judgments are squarely applicable to the facts of the present case. In view of the same, the appellant is not liable to pay any compensation to the 1st respondent herein in both the appeals who are the occupants of the car as policy issued by the appellant is only an Act policy. Therefore, the award of the Tribunal directing the appellant to pay the compensation alone is liable to be set aside and it is hereby set aside. The 2nd respondent-owner of the Tata sumo is liable to pay the compensation to the 1st respondent in both the appeals.

16.In the result, both the appeals are allowed and the compensation awarded by the Tribunal at Rs.1,07,086/- and Rs.1,11,000/- together with interest and costs is hereby confirmed. The 2nd respondent is directed to deposit the respective award amount along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.Nos.179 & 282 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri. On such deposit, the 1st respondent in both the appeals are permitted to withdraw their respective award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. It is made clear that if any amount is deposited by the appellant and the same was withdrawn by the 1st respondent in both the appeals, the appellant is not entitled to recover the same from the 1st respondent. The appellant is entitled to recover the amount withdrawn by the 1st respondent from 2nd respondent. The appellant is permitted to withdraw the award amount, if any lying in the credit of M.C.O.P.Nos.179 & 282 of 2009, if the award amount has already been deposited by the appellant. Consequently the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

krk
To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court,
Dharmapuri,

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

+1 cc to Mr.D.Ramesh Kumar Advocate sr41499

C.M.A.Nos.902 & 903 of 2013

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