IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4626 of 2019

The National Insurance Co. Ltd.,
represented by its Divisional Manager,
No.144, New No.46, Moore Street,
Chennai - 1. ... Appellant/ 2nd Respondent

Vs.

1.Pushpamary
2.J.Jesintha Priya Dharshini
3.Jenitha Suba Dharshini
4.S.Joseph Irudhayaraj ... Respondents / Petitioner / I Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.04.2019 made in M.C.O.P.No.119 of 2016 on the file of Motor Accidents Claims Tribunal, Additional District Court, (Fast Track Court), Kanchipuram.

For Appellant : Mr.D.Bhaskaran

For R1 : No appearance
Notice returned unserved for R2 to R4

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 16.04.2019 made in M.C.O.P.No.119 of 2016 on the file of Motor Accidents Claims Tribunal, Additional District Court, (Fast Track Court), Kanchipuram.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.119 of 2016 on the file of Motor Accidents Claims

Tribunal, Additional District Court, (Fast Track Court), Kanchipuram. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one Jesu @ Jesuraj who died in a road accident that took place on 20.10.2015.

3.According to the respondents 1 to 3, on the date of the accident i.e. on 20.10.2015, at about 08.45 hours, while the deceased was travelling in a car along with one Maria Viyani, driven by one Santhosh and when the car was nearing Damal Colony, Kanchipuram Taluk, the driver of the car, drove the car in a rash and negligent manner and due to puncture of tyre, the said car dashed in the centre median and capsized in the middle of the road. Due to the said impact, the deceased Jesu @ Jesuraj succumbed to the fatal injuries and died on the way to hospital. Therefore, the respondents 1 to 3 have filed above claim petition claiming compensation.

4.The 4th respondent/owner of the car remained ex parte before the Tribunal. Notice to the 4th respondent is dispensed with.

5.The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 to 3 and contended that the 4th respondent has taken Act only Policy. In FIR and other documents, it is clearly shown that the deceased was occupant of the car and not a third party. The driver of the car did not possess a valid driving license at the time of the accident. The vehicle involved in the accident was not insured with the appellant/Insurance Company. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 3.

6.Before the Tribunal, the 1st respondent, wife of the deceased examined herself as P.W.1, one Maria Arul Viyani an eyewitness was examined as P.W.2 and one Dr.Kameshwaran was examined as P.W.3 and marked eight documents as Exs.P1 to P8. On the side of the appellant/Insurance Company, one Lavanya/Assistant Manager of the National Insurance Company was examined as R.W.1 and marked one document as Ex.R1.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 4th respondent and directed the appellant/Insurance Company to pay a sum of Rs.5,74,000/- as compensation to the respondents 1 to 3.

8.Against the said award dated 16.04.2019 made in M.C.O.P.No.119 of 2016, granting compensation to the respondents 1 to 3, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to properly adjudicate the issue on liability and nature of contract between the owner and the appellant. The Tribunal failed to see that the policy Ex.R1 issued by the appellant is 'Act Only Policy'. The Tribunal failed to consider the judgment of Hon'ble Apex Court reported in "2012 (2) TN MAC 637 (SC) (National Insurance Company Limited vs. Balakrishnan) " and "2012 (2) TN MAC 650 (SC)" "2013 (1) SCC 731" and adjudicate the nature of contract before fixing the liability on the insurance company. The deceased travelled as occupant of the car, the policy covers only for third party and not for occupants and therefore, he prayed for allowing the appeal.

10.Though notice has been served on the respondents 1 to 3 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

11.It is the case of the respondents 1 to 3 that the accident had occurred while the deceased was travelling in the Maruthi Alto Car belonging to the 4th respondent herein. In the accident, the deceased Jesu @ Jesuraj died due to the injuries on the way to hospital. It is the case of the appellant that the deceased travelled as an occupant of the car and hence the appellant is not liable to pay any compensation. Before the Tribunal, the appellant has taken a specific stand in the counter statement that the policy issued by them is only 'Act Policy' and it does not cover the occupants of the car and occupants are not third parties. To substantiate this contention, the appellant examined Assistant Manager of the appellant/Insurance Company as R.W.1 and copy of the policy was marked as Ex.R1. R.W.1 has deposed that Ex.R1/copy of the policy issued to the 4th respondent is only 'Act Only Policy' and it does not cover the occupant of the car. The Tribunal failed to consider the stand of the appellant in the counter statement and evidence of R.W.1 and document filed by the appellant.

12.On perusal of Ex.R1 policy copy produced by the learned counsel appearing for the appellant it is clear that the policy issued by the appellant is 'Liability only Policy'. In the policy, it is mentioned "Liability only (Private Car)". The policy covers only third party liability. This issue whether in

Act Policy, occupants of the car are covered by the said policy and whether Insurance Company is liable to pay compensation for claim of the occupants or his legal heirs came up for consideration before Honb'le Apex Court. The Hon'ble Apex Court, in the judgment reported in "2013 (1) SCC 731" in the case of "National Insurance Co. Ltd. v. Balakrishnan, wherein, distinction between Act Policy and a Comprehensive / Private Car Package Policy has been dealt with. The Hon'ble Apex Court, considering Act Policy as well as Comprehensive Policy held that when the owner of the vehicle has taken only Act Policy, occupant of the car is not covered by the said policy and the Insurance Company is not liable to pay compensation towards the injuries sustained by the occupant or for the death of the occupant. Relevant paragraphs of the decision of the Hon'ble Supreme Court in Balakrishnan's case cited Supra are reproduced below :-

> "10. As per the command of Section 146 of the Act, the owner of a vehicle is obliged to obtain an insurance for the vehicle to cover the third-party risk. Section 147 deals with the requirements of policies and limits of liability. Section 147(1) which is relevant for the present purpose is reproduced below:
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> "147. Requirements of policies and limits of liability.--(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--
>
> (a) is issued by a person who is an authorised insurer; and
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) 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: Provided that a policy shall not be required--

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.--

For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place." On a scanning of the aforesaid provision, it is evident that the policy of insurance must be a policy which complies with the conditions enumerated under Sections 147(1)(a) 147(1)(and (b). It also provides where a policy is not required and also stipulates to cover any contractual liability.

13.In view of the judgment of the Hon'ble Apex Court referred to above, finding of the Tribunal directing the appellant/Insurance Company to pay compensation alone is set aside. The 4th respondent/owner of the vehicle is liable to pay compensation to the respondents 1 to 3.

14.In the result, this Civil Miscellaneous Appeal is allowed and the sum of Rs.5,74,000/- awarded by the Tribunal as compensation to the respondents 1 to 3/claimants, along with interest and costs is confirmed. The 4th respondent/owner of the vehicle is directed to deposit the award amount along with interest and costs within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn.

15.The learned counsel appearing for the appellant submitted that as per order of this Court, the appellant deposited entire award amount to the credit of M.C.O.P. No.119 of 2016 on the file of Motor Accidents Claims Tribunal, Additional District Court, (Fast Track Court), Kanchipuram. In view of the above submission, the appellant/Insurance Company is permitted to withdraw the entire award amount lying in the deposit to the credit of M.C.O.P.No.119 of 2016, which was already deposited by them. No costs.

Sd/-
Assistant Registrar(AD I(mdu))

//True Copy//

Sub Assistant Registrar

mtl

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

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

1 cc to Mr.D.Bhaskaran, Advocate, Sr. 7052

C.M.A.No.4626 of 2019

AK (CO)
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