IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1386 of 2017
C.M.P.No.7338 of 2017

Branch Manager,
National Insurance Company Limited,
No.7, Raja Vidhi, Post Box No.19,
Gobichettipalayam,
Gobichettipalayam Taluk,
Erode District-638 476.

..Appellant/2nd Respondent

Vs.

1.Madhaiyan
2.Narayanan ..Respondents/Petitioner & 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 29.09.2015 made in M.C.O.P.No.494 of 2013, on the file of the Motor Vehicle Accidents Claims Tribunal, IV Additional District Court, Bhavani.

For Appellant : Mr.Arunkumar

For Respondents : Mr.R.Prabakar for R1
Non-appearance for R2

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the National Insurance Company challenging the judgment and decree dated 29.09.2015 passed in M.C.O.P.No.494 of 2013 mainly on the ground that the appellant/Insurance Company is not liable to pay compensation.

2. The learned counsel appearing on behalf of the appellant mainly contended that the Tribunal has committed an error in appreciating the nature of the policy and the terms and conditions stipulated. The policy is Private Car Act Policy, therefore, the Insurance Company is liable to pay compensation only if a third party has involved in the accident. As far as the accident in question is concerned, the same occurred on 17.04.2013 at about 4.00 p.m and the first respondent in the

claim petition, who is the owner of the vehicle, was traveling from Sembulichampalayam to Thandampalayam main Road. At that time, the first respondent was driving the vehicle rash and negligently and the car capsized. On account of said accident, the claimant sustained injury. The first respondent is fully responsible and committed an act of negligence by driving the car in a rash and negligent manner. Immediately, the claimant had taken treatment in the hospital and sustained medical expenditure. The very nature of the accident reveals that there is no third party involvement in the accident. The first respondent, who is the owner of the vehicle, was driving the vehicle in a rash and negligent manner and the claimant was traveling in the car along with the first respondent. On account of rash and negligent driving, the car capsized and the claimants sustained injuries. This being the description regarding the accident itself, then as per the policy, the Insurance Company is not liable to pay compensation. In such circumstances, the owner alone is liable to pay compensation to the claimant.

3. The learned counsel appearing on behalf of the respondents/claimants contended that the claim petition was rightly entertained by the Tribunal and there is no infirmity as such. To substantiate the said contentions, the learned counsel for the respondents/claimants cited the judgment of the Hon'ble Supreme Court of India in the case of Oriental Insurance Company Limited Vs. Surendra Nath Loomba and others in Civil Appeal Nos.1345-1346 of 2009 dated 20.11.2012, and the Hon'ble Supreme Court of India made an observation as under:

> "21. ....
>
> 22. In view of the aforesaid legal position the question that emerges for consideration is whether in the case at hand the policy is an "Act Policy" or "Comprehensive/Package Policy". There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a comprehensive policy but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a package policy to cover the liability of an occupant in a car."
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> 14. We have quoted in extenso to reiterate the legal position. In the case at hand, the policy has not been brought on record. The learned counsel for the appellant-insurer would submit that it is an "Act Policy". The learned counsel for the respondent would

seriously dispute and submit that extra premium might have been paid or it may be a "Comprehensive/Package Policy". When Certificate of Insurance is filed but the policy is not brought on record it only conveys that the vehicle is insured. The nature of policy cannot be discerned from the same. Thus, we are disposed to think that it would be appropriate to remit the matter to the tribunal to enable the insurer to produce the policy and grant liberty to the parties to file additional documents and also lead further evidence as advised, and we order accordingly."

4. In the case of M/s. United India Insurance Company Vs. B.Hemawati and others, reported in (2001) ACJ 749, the Calcutta High Court made an observation as follows:

"46. In this connection, Order 8 Rule 2 of the Civil Procedure Code may be taken note of and it is set out hereinbelow:—

"Order 8 Rule 2—The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality."

5. As far as the Calcutta High Court Judgment is concerned, the observations made is regarding Order 8 Rule 2 of the Civil Procedure Code and therefore, the said observations is of no avail to the respondents/claimants, so also, the judgment of the Apex Court is concerned, the observations made is that there has been no discussion either by the Tribunal or by the High Court regarding the nature of the policy. Thus, the Apex Court decided the matter mainly on the ground that in the absence of any discussion regarding the nature of the policy and its terms and conditions, there is no reason to interfere. Therefore, such an ambiguity regarding the policy adjudicated before the Hon'ble Supreme Court of India cannot be relied upon with reference to the facts and circumstances of the present case is concerned.

6. In the present case on hand, the learned counsel appearing on behalf of the appellant/Insurance company produced the copy of the policy before this Court, which reveals that it is an Act policy and in respect of Act policy, the person, who was driving the vehicle, is not covered and therefore, this Court arrived a conclusion that the Tribunal has committed an error in fixing liability on the Insurance Company. Thus, the

facts and circumstances of the present case cannot be compared with reference to the judgment cited by the learned counsel for the respondents/claimants.

7. However, the respondents/claimants are at liberty to claim compensation against the owner of the vehicle. As far as the award is concerned, the respondents/claimants are at liberty to execute the same against the first respondent. But the appellant/Insurance Company is not liable to pay compensation as there is no coverage in the policy and the policy being an act policy, the Tribunal has committed an error in fixing the liability on the Insurance Company.

8. Accordingly, the Judgment and decree dated 29.09.2015 passed in M.C.O.P.No.494 of 2013 is set aside and the civil miscellaneous appeal stands allowed. The appellant has stated that the award amount has already been deposited. Thus, the appellant is permitted to withdraw the entire amount with accrued interest by filing an appropriate application. No costs. Consequently, connected miscellaneous petition is also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssb
To

1.The Motor Accident Claims Tribunal
IV Additional District Court
Bhavani.

2.The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.S. Arunkumar, Advocate sr 24186.
+1 CC to Mr.R.Prabakar, Advocate sr 24509.

C.M.A.No.1386 of 2017

SR(CO)
SP(18/12/2020)