BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.11.2020
CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD) No.652 of 2008
and
M.P.(MD) No.2 of 2008

The Oriental Insurance Co. Ltd.,
Rep.by its Divisional Manager
Office at 6-A, North Cotton Road
Thoothukudi-628 002 ... Appellant/2nd Respondent

-vs-

1.S.Moorthy ... 1st Respondent/Petitioner

2.M.Thanga Marriappan ... 2nd Respondent/1st Respondent
[R2 remained ex *parte* before the Lower Court]

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and Decree dated 26.07.2007, made in M.C.O.P.No.22 of 2002, on the file of the Motor Accident Claims Tribunal-cum-Additional District Court (FTC-I), Thoothukudi.

For Appellant : Mr.K.Bhaskaran

For Respondents : Mr.G.Venugopal for R1
No appearance for R2

J U D G M E N T

This civil miscellaneous appeal arises out of the Judgment and Decree dated 26.07.2007, made in M.C.O.P.No.22 of 2002, on the file of the Motor Accident Claims Tribunal / Additional District Court (FTC-I), Thoothukudi.

2. The claim petition was filed by the first respondent seeking compensation of Rs.10,00,000/-. It is the case of the claimant that on 04.06.2000, he was travelling in a Jeep bearing registration No.MDU 5287, belonging to the second respondent and insured with the appellant - Insurance Company. When the Jeep was proceeding near Nila Sea Foods Company in Tuticorin - Ettayapuram Main Road, at about 18.30 hours, the driver of the Jeep drove the vehicle in a rash and negligent manner and all of a sudden, he applied a brake, due to which, the claimant and other passengers travelled in the vehicle had sustained grievous injuries.

Immediately, the claimant was taken to Sundaram Arulraj Hospital, Tuticorin, for treatment. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the Jeep, the claimant laid a petition, for awarding compensation of Rs.10,00,000/-.

3. The claim was opposed by the appellant – Insurance Company mainly contending that there is no risk cover for the person, who travelled in a private Car as per the policy conditions. Further, the claimant cannot be considered as a third party and hence, no risk cover is made for him and the appellant – Insurance Company is not liable to indemnify the loss of the owner of the vehicle.

4. Before the Tribunal, on the side of the claimant, P.Ws.1 and 2 were examined and Exs.P1 to P13 were marked. On the side of the respondents, R.W.1 was examined and Ex.R1 was marked.

5. Upon consideration of the oral and documentary evidence adduced by the parties, the Tribunal came to the conclusion that the accident occurred only due to the negligent driving of the driver of the vehicle and therefore, he was held responsible for the accident and awarded a compensation of Rs.2,85,100/- along with interest at the rate of 6% per annum and held that the appellant – Insurance Company is liable to pay the same to the first respondent / claimant. Aggrieved over the same, the Insurance Company has filed the present civil miscellaneous appeal.

6. Mr.K.Bhaskaran, learned counsel appearing for the appellant – Insurance Company would submit that admittedly, the claimant was travelling in a Jeep and as per the conditions of the Insurance Policy (Ex.R1), the appellant – Insurance Company cannot be mulcted with liability. The learned counsel would also submit that they have not questioned the quantum of compensation awarded in favour of the first respondent / claimant.

7. Per contra, Mr.G.Venugopal, learned counsel appearing for the first respondent / claimant would contend that in the Insurance Policy (Ex.R1) the capacity of the vehicle is mentioned as "5 (Five)", for which a premium was collected from the insured, so it is not open to the appellant – Insurance Company to repudiate their liability. The learned counsel, in support of his contentions, has relied on the following decisions:

(i) ***Tilak Singh vs. Shashi Bijulwan and others***, reported in ***(1999) ACJ 661;***

(ii) ***Oriental Insurance Company Limited, Bangalore vs. Minaxi and others***, reported in ***(2000) ACJ 385;***

(iii) ***The Manager, New India Assurance Co. Ltd. vs. R.Senthamarai***, reported in ***2011 (2) TN MAC 625;***

(iv) ***New India Assurance Co. Ltd. vs. Murugan***, reported in ***2017 (1) TN MAC 184***; and

(v) ***Divisional Manager, National Insurance Co. Ltd. vs. Sundaramoorthy***, reported in ***2019 (1) TN MAC 751.***

8. I have carefully considered the rival submissions and perused the materials available on record.

9. In the instant case, indisputably, the insured had taken only Act Policy and the offending vehicle is not covered with Comprehensive / Package Policy. Furthermore, no additional premium has been paid to cover the passengers travelling in the private vehicle (Jeep). In such circumstances, this Court is called upon to decide as to whether the insurer is liable to indemnify the award amount.

10. The issue involved in this case is no longer *res integra*. The liability of the Insurance Company to pay compensation under Section 147 of Motor Vehicles Act, 1988 for the death or injury to gratuitous passenger carried in a private vehicle came up for consideration before the Honourable Apex Court in ***United India Insurance Co. Ltd. vs. Tilak Singh***, reported in ***(2006) 4 SCC 404.*** In that case, following the principles laid down in ***T.V.Jose (Dr.) vs. Chacko P.M., [(2001) 8 SCC 748]*** and ***New India Assurance Co. Ltd. vs. Asha Rani, [(2003) 2 SCC 223],*** it has been observed and held as under:

> *"21. In our view, although the observations made in Asha Rani's case 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 a gratuitous passenger."*

11. In ***G.M., United India Insurance vs. M.Laxmi and others***, dated 14.11.2008 in S.L.P.(C) No.20608 of 2004, the Apex Court has adopted the view taken in ***Tilak Singh***'s case.

12. The Honourable Division Bench of this Court in ***New India Assurance Co. Ltd. vs. S.Krishnasamy***, reported in ***2015 (1) TN MAC 19 (DB)***, while deciding the liability of the insurer in respect of occupants of a Car, has held that the occupants of the Car cannot be termed as "Third Party". Since the Car was insured under Act Policy, the insurer cannot be held to be liable to pay compensation. The relevant paragraphs of the said decision would run thus:

> *"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."*

13. This Court in ***National Insurance Co. Ltd. vs. M.Padmini***, reported in ***2017 (1) TN MAC 566***, set aside the direction issued by the Tribunal by applying the doctrine of Pay and Recover in the case of a passenger travelling in a Jeep, which covered only Act Policy.

14. Now, we have to consider the decision referred by the learned counsel for the first respondent / claimant. In ***Sundaramoorthy***'s case (cited supra), this Court having found that the insurance policy in respect of a two-wheeler is in the nature of Act Policy and no additional premium in respect of the pillion rider was collected, held that the pillion rider was not covered by the policy, but, however, a direction was issued to the Insurance Company to pay and recover it from the owner of the vehicle.

15. The Karnataka High Court in ***Minaxi***'s case (cited supra) took a view that the term "any person" referred in Section 147(1)(i) of the Motor Vehicles Act covers the pillion rider and held that the policy one issuable by the Insurance Company must cover as against any liability which may be incurred by the owner of the vehicle in respect of the death of or bodily injury to any person and must include the death or bodily injury or injuries likely to be suffered by the third parties too. So, the policy covers the pillion rider also.

16. The Shimla High Court, in ***Shashi Bijulwan***'s case (cited supra), made the Insurance Company liable to pay compensation where a pillion rider died when the scooter skidded and the contention of the Insurance Company that the risk did not cover the pillion rider was not accepted by the Division Bench of Shimla High Court. It is appropriate to note that this decision of Shimla High Court was set aside by the Honourable Apex Court vide decision reported in ***(2006) 4 SCC 404.***

17. In ***Senthamarai***'s case (cited supra), the deceased travelled in a private Car as gratuitous passenger. The policy not being a comprehensive policy, but only an Act Policy and the terms in the Policy being included the occupants carried in the Car provided such occupants are not carried for hire or reward, the Insurance Company was held not liable to pay compensation and a direction was issued to the Insurance Company to pay and recover the same from the owner of the vehicle.

18. In ***Murugan***'s case (cited supra), this Court while interpreting Section 145(g) of the Motor Vehicles Act, took a view that a 'Third Party' is one who is neither the insurer nor the insured, which includes everyone, be it a person travelling in another vehicle or one walking on the road or a passenger of a vehicle, which is the subject matter of the insurance policy.

19. In the matter on hand, admittedly, the claimant was travelling in a Jeep owned by the second respondent herein. It is not disputed that the insurance policy in respect of the offending vehicle is in the nature of Act only policy and no additional premium was collected by the insurer covering the risk of the occupants of the vehicle. The Honourable Apex Court in ***Tilak Singh***'s case, ***Laxmi***'s case and this Court in ***Krishnasamy***'s case (cited supra) have taken a consistent view that Act Only Policy does not cover the risk of the pillion rider of a two-wheeler or a passenger in a private Car. The Honourable Division Bench further observed that the doctrine of pay and recover cannot be applied in such cases. Furthermore, this Court in ***Padmini***'s case (cited supra) quashed the direction issued by the Tribunal to the Insurance Company to pay the award amount to the claimant and recover it from the owner of the vehicle. So, this Court is unable to follow the directions issued by the Single Judge of this Court and other High Courts in the decisions cited by the learned counsel for the first respondent / claimant. In the light of the principles laid in the decisions referred above, in my considered opinion, the appellant – Insurance Company cannot be made liable to pay the award amount to the first respondent / claimant as per the directions of the Tribunal.

20. At this juncture, the learned counsel appearing for the appellant – Insurance Company submitted that as per the interim orders of this Court, the appellant – Insurance Company has deposited the entire award amount with accrued interest and costs. In view of the above findings of this Court, it is open to the appellant – Insurance Company to withdraw the amount lying in the credit of the claim petition. Since the appellant – Insurance Company has been held not liable to pay the compensation, it is open to the first respondent / claimant to claim the compensation amount awarded by the Tribunal from the second respondent – owner of the vehicle in the manner known to law.

21. Resultantly, the civil miscellaneous appeal is allowed and the Judgment and Decree dated 26.07.2007, made in M.C.O.P.No.22 of 2002, on the file of the Motor Accident Claims Tribunal / Additional District Court (FTC-I), Thoothukudi, are set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

1.The Additional District Judge,
Motor accident Claims Tribunal
(Fast Track Court-I),
Thoothukudi.

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The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
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+1 CC to M/s.K.RHASKARAN, Advocate (SR-22117[F] dated 19/11/2020)

C.M.A.(MD) No.652 of 2008
and
M.P.(MD) No.2 of 2008
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