



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2021
PRONOUNCED ON : 17.04.2021

CORAM:

THE HONOURABLE MR.JUSTICERMT.TEEKAA RAMAN

C.M.A.No.1214 of 2016
and
CMP.No.9159 of 2016

M/s.New India Assurance Company Limited,
No.45, Moore Street,
Chennai 600 001.

...Appellant / 2nd Respondent

Vs.

1.K.Jayanthi ...1st Respondent / Petitioner

2.T.Loganathan ...2nd Respondent / 1st Respondent

PRAYER : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.1669 of 2013, by the Motor Accidents Claims Tribunal, learned V Judge, Small Causes Court, Chennai, on 20.07.2015.

For Appellant : Mr.J.Chandran

For Respondents : No appearance

JUDGMENT

(This case has been heard through video conference)

The Insurance Company has preferred this appeal against the award dated 20.07.2015 passed by the learned V Judge, [Motor Accidents Claims Tribunal], Small Causes Court, Chennai, in M.C.O.P.No.1669 of 2013, on the ground of liability and quantum.

2.As to the manner of the accident and factum of the accident, when there was sudden crossing of a dog and without involvement of any other vehicle, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver of the two wheeler.

3.The case of the claim petitioner before the Tribunal is that on 03.01.2013, at about 19 hours, the claim petitioner, as a pillion rider, was travelling in a motor cycle bearing Registration No.TN-19-C- 4478 from Thiruporur to Mahabalipuram.



At that time, the driver of the motor cycle was driven the vehicle in a rash and negligent manner and came at a dangerous speed, applied sudden break and thereby, the claim petitioner fell down from the vehicle and sustained severe injuries. The accident had occurred only due to the fault on the part of the driver of the motor cycle.

4.Hence, the claim petitioner/first respondent herein has filed the above claim petition claiming compensation of Rs.6,00,000/- and the Tribunal, after considering both oral and documentary evidence adduced on either side, awarded a sum of Rs.5,95,100/- as compensation. Aggrieved against the same, the Insurance Company has preferred this appeal on the point of liability and quantum.

5.Before the Tribunal, on behalf of the claim petitioner, she examined herself as PW1 and Dr.Saravanabhavanandham was examined as PW2 and documents were marked as Exs.P1 to P6 and on behalf of the respondents, RW1 has been examined and documents were marked as Exs.R1 & R2.

6.Heard the learned counsel for the appellant/Insurance Company and perused the materials placed on record.

7.While, the two wheeler is driven by the husband of the injured, in other words, the owner of the vehicle is the husband of the claim petitioner, he drove the vehicle and the claim petitioner was travelled in the said vehicle as a pillion rider.

8.During the cross examination, the claim petitioner could depose that due to the application of the sudden break to avoid the accident by the driver of the two wheeler, the vehicle skid and fell down and hence, she sustained injuries.

9.Per contra, the learned counsel for the Insurance Company/appellant herein in the counter affidavit as well as through the evidence before the Tribunal could project the case that the claim petitioner has given statement to the police that while her husband, who was riding the two wheeler, had applied sudden break as a dog came across the road, in fear, she jumped from the two wheeler and her husband viz., the rider of the two wheeler had not committed any mistake and accordingly, the case has been closed as a 'mistake of fact'. The said statement given by the claim petitioner was marked as Ex.R1 and the final report copy was marked as Ex.R2 before the Judicial Magistrate Court.

10.Since the accident has taken place due to the rash and negligent driving on the part of the rider of the two wheeler, the Tribunal has held that the Insurance Company is liable to



pay compensation to the claim petitioner. Hence, the present appeal has been preferred by the Insurance Company.

11.Despite notice was served on the respondents, non appeared on behalf of them.

12.Two wheeler is owned by the husband of the claim petitioner and it was driver by him. The positive version of PW1/injured is that due to the rash and negligent driving of the driver viz., husband the claim petitioner, the accident has taken place. Admittedly, no other vehicle was involved in the accident is not in dispute.

13.In the recent judgment reported in 2020 (1) TN MAC 1 (SC) : 2020 (1) CTC 443 (SC) [Ramkhiladi and another v. United India Insurance Co. Ltd., and another], the Hon'ble Supreme Court has elaborately discussed the scope of the claim petition under Section 163-A of the Motor Vehicles Act. Undoubtedly, the Special provision cannot be read in isolation and the Apex Court considered Sections 147, 166 & 163-A of the Motor Vehicles Act. Thus, the Special Provision is to be read conjointly and in consonance with the object, purpose as well as the intention of the Legislature.

14.In the case before the Hon'ble Supreme Court, the finding was that the parties are governed by the Contract of Insurance and under the Contract of Insurance, the liability of the Insurance Company would be qua Third party only. Thus the deceased cannot be said to be a Third party with respect to the insured vehicle. There cannot be any dispute that the liability of the Insurance Company would be as per the terms and conditions of the Contract of Insurance. The Insurance Policy covers the liability incurred by the insured in respect of death or bodily injury to any person (including an owner of the goods or his authorized 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. Thus Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

15.In the decision reported in (2020) 1 TN MAC 646, my learned brother Justice S.M.Subramaniam has held as follows:

It is crystal clear that the scope of Section 163-A of the Act cannot be expanded, so as to cover borrower of the vehicle, who stepped into the shoes of the registered owner and file claim petition under Section 163-A of the Act.

16.In view of the terms of the contract of Insurance, the Insurance Company is not liable to pay compensation, since the deceased himself is a wrongdoer and hence, he is a tort-feasor



by himself. Therefore, in the absence of any additional premium being paid under the Policy by the owner of the vehicle covering an insurance policy coverage extending to the pillion rider, the Insurance Company is not liable to pay the compensation. Accordingly, the appellant / Insurance Company is exonerated from any liability.

17. In the instant case, it is a two wheeler and the policy is only for third party. Hence, the wife travelled along with her husband as a pillion rider and the accident has taken place due to the wrong driving by the owner himself without any intervention of any other vehicle and hence, the Insurance Company is not liable to pay compensation.

18. Accordingly, the Civil Miscellaneous Appeal is partly allowed to the limited extent as indicated above and the liability on the part of the Insurance Company as fixed by the Tribunal in MCOP.No.1669 of 2013 is hereby set aside. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
The V Judge, Small Causes Court,
Chennai.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s.M.Malar, Advocate SR.No.23868
+1cc to M/s.J.Chandran, Advocate SR.No.24054

C.M.A.No.1214 of 2016
and
CMP.No.9159 of 2016

SSV(CO)
RVM(15/09/2021)