IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1267 of 2016
and C.M.P.No.9675 of 2016

The Divisional Manager,
The United India Insurance Co. Ltd.,
Divisional Office, 13-A, Nethaji Road,
Manjakuppam, Cuddalore.

... Appellant/2nd Respondent

Vs

1.M.Balamurugan

2.B.Thilagavathi ... Respondents/Claimants

3.P.Rajarajan ...Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 22.3.2016 made in M.C.O.P.No.1449 of 2013 on the file of Motor Accidents Claims Tribunal, (1st Additional District Court), Cuddalore.

For Appellant : Mr.D.Bhaskaran

For Respondents : Ms.Ramya Rao for R1 & R2
R3 - unclaimed

J U D G M E N T

(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the impugned Award dated 22.03.2016 passed by the Motor Accident Claims Tribunal (1st Additional District Court), Cuddalore in MCOP.No.1449 of 2013.

2.Heard Mr.D.Bhaskaran, learned counsel for the Appellant and Ms.Ramya Rao, learned counsel for the respondents 1 and 2.

3.The Appellant Insurance Company has challenged the impugned Award on the ground that they are not liable to compensate the claim since the Insurance Policy issued by them for the subject vehicle is an Act Policy.

4.According to the Appellant, the Tribunal failed to take note of the aforementioned fact and did not adjudicate on their liability to compensate in an Act Policy and did not follow the decisions of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. vs. Balakrishnan reported in 2012 (2) TN MAC 637 (SC) and in the case of Oriental Insurance Company Limited v.Surendra Nath Loomba reported in 2012 (2) TN MAC 650 (SC).

5.It is the case of the Appellant Insurance Company that the third party Policy does not cover liability to gratuitous passengers and therefore the claimant who was a pillion rider in the vehicle insured with the Appellant which was at fault is not entitled to claim compensation from the Appellant as the Policy is only an Act Policy.

6.As seen from the pleadings of the Appellant Insurance Company, the aforesaid defence was not raised by them before the Tribunal. However, as seen from Ex.P7 filed on the side of the claimant and Ex.R4 filed on the side of the Insurance Company, there seems to be some basis for the Appellant's contention before this Court that the Policy issued by them is only an Act Policy.

7.This Court has also perused and examined the impugned Award.

8.Admittedly, there is no adjudication with regard to the nature of Insurance Policy issued by the Appellant.

9.The decisions relied upon by the learned counsel for the Appellant in 2012 (2) TN MAC 637 (SC) and 2012 (2) TN MAC 650 (SC) makes it clear that in case of Act Policy/Liability only Policy, the Insurance Company has no liability towards the pillion rider. All these factors will have to be examined by the Tribunal and this Court is of the considered view that the matter will have to be remanded back to the Tribunal for fresh consideration.

10.Learned counsel for the respondents/claimants has also not raised any serious objection for remanding the matter back to the Tribunal even though he would submit that the said stand taken by the Insurance Company before this Court was not taken by them before the Tribunal.

11.After giving due consideration to the aforementioned factors as well as the submissions made by the respective counsels, this Court is of the considered view that the matter will have to be remanded back to the Tribunal for fresh consideration.

12.For the foregoing reasons, the impugned Award dated 22.03.2016 passed by the Motor Accidents Claims Tribunal, (1st Additional District Court), Cuddalore is hereby set aside and the matter is remanded back to the Tribunal for fresh consideration and the Tribunal shall after affording sufficient opportunity to the Appellant as well as the respondents to adduce additional evidence shall dispose of the claim petition after adjudicating on all the issues raised by the respective parties including the issue as to whether the Insurance Policy is an Act only Policy or not and pass final Award within a period of six months from the date of receipt of a copy of this Judgment.

13.With the aforesaid direction, this Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

14.The amount deposited by the Appellant which is lying to the credit of MCOP No.1449 of 2013, the Tribunal shall remain in deposit till the disposal of the claim petition by the Tribunal on remand.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To
1.The Motor Accidents Claims Tribunal,
(1st Additional District Court), Cuddalore.

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

+1CC to Mr.A.N.Viswanatha Rao, Advocate, Sr.No.28805

C.M.A.No.1267 of 2016

LN (CO)
K.RK. (16.11.2021)