BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 23.12.2020

DATE ON WHICH PRONOUNCED : 22.01.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

C.M.A.(MD).No.1240 of 2011

The United India Insurance Co.Ltd.,
Through its Branch Manager,
Kannutru Shopping Complex,
Kallarkutti Road, Adimali. : Appellant /2nd Respondent

Vs.

1.K.Poonkodi : 1st Respondent/Petitioner

2.K.D.Sanjeev : 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 07.06.2011 passed in M.C.O.P.No.27 of 2010 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Theni.

For Appellant : Mr.I.Robert Chandrakumar
for Mr.Prabhu Rajadurai

For R1 : No Appearance

For R2 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree, dated 07.06.2011 passed in M.C.O.P.No.27 of 2010 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Theni.

2.The case of the petitioner/claimant before the Tribunal is that on 01.11.2009, when the petitioner was travelling in a vehicle bearing Registration No.KL-06-1286, at about 0.45 hours the driver of the vehicle lost his control and hit against the bridge, as a result of which, the petitioner sustained grievous injuries and was taken to Government Medical College Hospital, Theni and he was taking treatment as inpatient from 01.11.2009 to 12.11.2009. Thereafter, he was taking treatment as outpatient. In respect of the occurrence, a case in Crime No.51 of 2009 was registered on the file of the Kurangani Police Station, Theni. Claiming compensation of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand Only), the petitioner/claimant, filed a claim petition before the Tribunal.

3.The case of the appellant/2nd respondent before the Tribunal is that the accident did not take place due to the rash and negligent driving on the part of the first respondent's vehicle driver and the other facts were denied conventionally.

4.Before the Tribunal, on the side of the petitioner/claimant, two witnesses were examined and ten documents marked. On the side of the respondent, one witness was examined and one document marked.

5.At the conclusion of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent's vehicle driver.

6.Regarding the compensation, it fixed the same at Rs.67,000/- (Rupees Sixty Seven Thousand Only) with 7.5% interest per annum.

7.Against the liability, the Insurance Company is before this Court mainly on the ground that the offending vehicle, in which, the petitioner was travelling is a private Car, which is not covered under the insurance policy, since it was only Act Policy, no liability can be attached to the Insurance Company.

8.Regarding the quantum, no dispute was raised. So, only the point to decide is ***whether the petitioner was also covered under the policy which was taken in respect of offending vehicle with the appellant?.***

9.The appellant would contend that as per Ex.R.1, Policy Copy clearly it is mentioned that it is only liability policy. So, regarding the limitations for use, it has been mentioned that the policy will not operate, if the vehicle was used for hire or reward, carriage of goods, organised racing, pace making, speed testing and reliability trials, use in connection with Motor Trade. Premium was paid for third party liability, basic and compulsory P.A coverage to owner cum driver and workman compensation to one employee. The total seating capacity in the vehicle is mentioned as six. So, according to the appellant, the occupant who travelled in the vehicle either gratuitous passenger for hire or reward and so, the award passed against them, is not correct. In what capacity the petitioner travelled in the vehicle, has not spoken by her during evidence. She has simply stated that she travelled in the vehicle for attending a marriage function. In the First Information Report (Ex.P.1), which was registered, subsequent to the occurrence, it has been stated that they travelled in the vehicle numbering about 10 persons from Peechakadu to Pommanampatty. R.W.1 is the official attached to the appellant Insurance Company. According to him, the petitioner travelled in the vehicle, as a hired passenger and since it was only an Act Policy, the Insurance Company is not liable to pay compensation.

10.As to the limitation of a private Car and Act Policy, in a judgments reported in **United India Insurance Company Limited Vs Tilak Singh and others 2006 1 TNMAC 36 SC, United Insurance Company Limited Vs M.Laxmi 2009 ACJ 104, Oriental Insurance Company Vs Surendra Nath Loomba and others 2012 (2) TNMAC 650 (SC)** and **New India Assurance Company Limited Vs S.Krishnasamy and others 2015 1 TNMAC 19 DB**, have elaborately discussed about the difference between the Act Policy and Comprehensive Policy in respect of private Car, pillion rider etc.,

11.Only in case of Comprehensive Policy, the occupant of a private Car is covered and in respect of Act Policy, occupant is not covered and this position have been more or less, well settled. So, following those cases, this Court judgment, in a case delivered on 24/02/2017 in **National Insurance Company Vs Padmini and others 2017 11 TNMAC 566** is also elaborately discussed about the difference between Act Policy and Comprehensive Policy. So, reading of these judgments clearly shows that, in case of Act Policy, occupant of a Car is not entitled for compensation, to be paid by the Insurance Company along with the insured. So, since this is also a case of liability Only Policy, the Insurance Company is not liable to pay compensation to the claimant. So, even pay and recover cannot be ordered, in such cases. Since, the award was passed on 07.06.2011, as per the judgement reported in **United India Insurance Company Vs Nagammal 2009 1 TNMAC 1 (FB),** pay and recover cannot be invoked. So, the order of the Tribunal directing the appellant to pay the compensation along with insured, is liable to be set aside.

12.In the result, the appeal is allowed and the order of the Tribunal, directing the appellant to pay the compensation along with the insured is set aside and the owner of the vehicle, who is the 2nd respondent herein is directed to pay compensation awarded by the Tribunal along with the interest at the rate of 7.5% per annum and cost within a period of two months from the date of receipt of a copy of this order. On such deposit being made, the petitioner/claimant is entitled to receive the entire award amount. If any deposit being made by the appellant, the same shall be refunded. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

To

1.The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate), Theni.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai(2 copies).

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-1981[F] dated 25/01/2021)

Judgment made in
C.M.A.(MD).No.1240 of 2011
22.01.2021

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TR(12.02.2021) 4P 5C