BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE ON WHICH RESERVED :23.12.2020
DATE ON WHICH PRONOUNCED :27.01.2021
CORAM:
THE HON'BLE MR JUSTICE G.ILANGOVAN
C.M.A(MD) Nos.1724 to 1728 of 2010
and
MP(MD)Nos.2, 2, 2, 2 & 2 of 2010

National Insurance Company Limited,
Rep through its Branch Manager,
Erode. ... Appellant/2nd Respondent
(in all petitions)

vs.

Chandra ... 1st Respondent / Petitioner
(In C.M.A(MD) No.1724 of 2010)

Lily Pushpam ... 1st Respondent / Petitioner
(In C.M.A(MD) No.1725 of 2010)

Jeyaseeli ... 1st Respondent / Petitioner
(In C.M.A(MD) No.1726 of 2010)

Merlin Thomas ... 1st Respondent / Petitioner
(In C.M.A(MD) No.1727 of 2010)

Siluvai Mary ... 1st Respondent / Petitioner
(In C.M.A(MD) No.1728 of 2010)

2.Devasenathipathi ... 2nd Respondent / 1st Respondent
(in all petitions)

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and award made in M.C.O.P.Nos.90, 92, 93, 94 & 95 of 2007 dated 03.07.2009 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tirunelveli.

For Appellants : Mr.D.Sivaraman
(in all petitions)
For R1 : No Appearance
(in all petitions)
For R2 : No Appearance
(in all petitions)

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the judgment and award made in M.C.O.P.Nos.90, 92, 93, 94 & 95 of 2007 dated 03.07.2009 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tirunelveli.

2.The case of the petitioners/claimants before the Tribunal, on 03.01.2007, at about 09.00 p.m, at night, all the claimants were travelling in a vehicle bearing Registration No.T.A.P 8285, which is a Trekker from Kadatchapuram to Veppankadu. When they were nearing the place of occurrence, the driver of the vehicle, drover the same, in a rash and negligent manner and lost his control. As a result of which, the Trekker fell on the road side ditch. Due to which, all the claimants suffered injuries, which were noted in their respective petitions.

3. (i) The claimant in M.C.O.P.No.90 of 2007, is one Chandra was working as Mason, at the time of the accident and earned a sum of Rs.6,000/- per month. She suffered injuries, on the head, left shoulder, left hand and chest region. She was taking treatment as inpatient in Government Hospital, Tirunelveli. Claiming compensation of Rs.50,000/- (Rupees Fifty Thousand Only), she approached the Tribunal.

(ii) The claimant in M.C.O.P.No.92 of 2007, is one Lily Pushpam was earned a sum of Rs.6,000/- by doing agriculture and Mason. She suffered injury, on the left shoulder, which was a fracture. She took treatment in Government Hospital, Tirunelveli for 15 days. Claiming compensation of Rs.3,00,000/- (Rupees Three Lakhs Only), she approached the Tribunal.

(iii) The claimant in M.C.O.P.No.93 of 2007, one Jeyaseeli was also working as Mason and doing agriculture work and earned a sum of Rs.6,000/-. She suffered injury, on the fore head and face. She took treatment in Government Hospital, Tirunelveli for 5 days. Thereafter, she taking treatment in a private hospital and Claiming compensation of Rs.40,000/- (Rupees Forty Thousand Only), she approached the Tribunal.

(iv) The claimant in M.C.O.P.No.94 of 2007, one Merlin Thomas was doing similar work and she earned a sum of Rs.6,000/- per month. She suffered injury, on the right leg and right hip. Claiming a compensation of Rs.3,00,000/- (Rupees Three Lakhs Only), she approached the Tribunal.

(v) The claimant in M.C.O.P.No.95 of 2007, one Siluvai Mary was also doing similar work and similar income. She suffered injury, on the fore head and face. She also took treatment in the Government Hospital, Tirunelveli. Claiming compensation of Rs.40,000/- (Rupees Forty Thousand Only), she approached the Tribunal.

4.In all the petitions, the second respondent, who is the appellant herein, contended that, the first respondent's vehicle was registered as own Car for personal purpose. It is not permitted to carry passenger for hire. The vehicle was used for taking passenger on payment of fare. Totally 12 persons travelled and so, the Insurance Company is not liable to pay any compensation amount. All the claim petitions were clubbed together and common enquiry was conducted.

5.Before the Tribunal, on the side of the petitioners/claimants, seven witnesses were examined and fourteen documents marked. On the side of the respondent, one witness was examined and one document marked.

6.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.

7.Regarding the compensation, in M.C.O.P.No.90 of 2007, it fixed the same at Rs.10,000/- (Rupees Ten Thousand Only) with interest at the rate of 7.5% per annum, in M.C.O.P.No.92 of 2007, it fixed the same at Rs.43,000/- (Rupees Forty Three Thousand Only) with interest at the rate of 7.5% per annum, in M.C.O.P.No.93 of 2007, it fixed the same at Rs.10,000/- (Rupees Ten Thousand Only) with interest at the rate of 7.5% per annum, in M.C.O.P.No.94 of 2007, it fixed the same at Rs.58,000/- (Rupees Fifty Eight Thousand Only) with interest at the rate of 7.5% per annum and in M.C.O.P.No.95 of 2007, it fixed the same at Rs.10,000/- (Rupees Ten Thousand Only) with interest at the rate of 7.5% per annum.

8.Against the liability, the appellant/Insurance Company is before this Court mainly on the ground that the offending vehicle, in which, the petitioners were travelling in 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.

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

10.The appellant would contend that as per Ex.R.1, Policy Copy is clearly 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, used in connection with Motor Trade. So, the policy 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 occupants, who travelled in a vehicle either gratuitous passengers or for hire and so, the award passed against them, is not correct. Under what capacity, the petitioners travelled in the vehicle was not spoken by them, during evidence. They have simply stated that they travelled in the vehicle for attending temple festival. 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 13 persons from Kadatchapuram to Veppankadu. So, this Court find, no reference to the capacity of the occupants of the private Car. R.W.1 is the official attached to the appellant Insurance Company. According to him, the petitioners travelled in the vehicle, as a hired passengers and since it was only an Act Policy, the Insurance Company is not liable to pay compensation.

11.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 Act Policy and Comprehensive Policy, in respect of private Car, pillion rider etc.,

12.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**, has 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. As per the judgement reported in **United India Insurance Company Vs Nagammal and others 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. Since it is only No Liability Policy, the Insurance Company can not be fastened with any liability and only the owner is liable to pay the compensation amount, awarded by the Tribunal. So, to that extent, the award passed by the Tribunal, is required to be modified.

13.In the result, all the appeals are allowed and the order of the Tribunal, directing the appellant, to pay the compensation, on behalf of the owner and recovered the same from him, is set aside. The owner, who is the second respondent herein, is directed to pay the entire award amount with interest at the rate of 7.5% per annum and costs to all the claimants. The deposit shall be made within a period of two months from the date of receipt of a copy of this order and on such deposit being made, the claimants are permitted to withdraw their award amount. If any deposit being made by the appellant, the same shall be refunded. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

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

+5 CC to M/s.D.SIVARAMAN, Advocate (SR-2422[F],2423,2424,2425,2426 dated 29/01/2021)

C.M.A(MD) Nos.1724 to 1728 of 2010
and
MP(MD)Nos.2, 2, 2, 2 & 2 of 2010
27.01.2021

KMK(CO)
KB(10.03.2021) 5P 9C