BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.01.2021
CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
C.M.A(MD)No.305 of 2011

M/s.United India Insurance Company Limited
Divisional Office,
1, BOB Building, 4th Floor,
State Bank Road,
Coimbatore-641 018. ... Appellant/2nd Respondent

-vs-

1.Mallika
2.Santhi
3.Kavitha
4.Muruganandham ... 1st to 4th Respondents/Petitioners

5.G.Preamarajan ...5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside or modify the order of the Tribunal in M.C.O.P.No.286 of 2008 dated 25.02.2010 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Tenkasi and allow the appeal with costs.

For Appellant	:	Mr.J.S.Murali
For R1,R3 & R4	:	Mr.K.S.Muthu
For R2	:	No appearance
For R5	:	Dismissed vide court order dated 29.11.2017

J U D G M E N T

This civil miscellaneous appeal is directed against the judgment and award passed by the Motor Accident Claims Tribunal, Additional Subordinate Court, Tenkasi in M.C.O.P.No.286 of 2008, dated 25.02.2010.

2. The wife and children of the deceased Arumuga Nadar filed a claim petition seeking compensation of Rs.25,00,000/-. It is their case that on 05.06.2008 the deceased travelled as a passenger in TN-20-1000 TATA Safari Car from Madurai to Srivilliputhur and the car was driven by its driver in a rash and negligent manner and hit against the Tamarind Tree and he died on the spot. It is also stated that the other passengers in the car also sustained injuries.

3. The appellant-Insurance Company resisted the claim petition contending that the insured has taken only Act policy and it does not cover the occupants of the car and hence, no liability can be fixed on the Insurance Company. In support of the contention

of the appellant, the Insurance policy was marked as Ex.R1. They examined one Madasamy as R.W.1. The insurance policy has also been annexed in the typed set of papers filed along with appeal.

4. Before the Tribunal, on the side of the claimants, P.Ws.1 and 2 were examined and Exs.P1 to P8 were marked. On the side of the respondent, R.W.1 was examined and Ex.R1 was marked. Exs.X1 to X 6 were marked on the side of the official witnesses.

5. Upon consideration of the oral and documentary evidence adduced by the parties, the Tribunal came to the conclusion that the vehicle was insured with the second respondent-insurance company, and hence, the second respondent is liable to pay the compensation to the claimants. Aggrieved over the same, the Insurance Company has filed the present civil miscellaneous appeal.

6. Heard the learned counsels on either side and perused the materials available on record.

7. The only issue arises for consideration in this appeal is whether the Insurance Company can be made liable to pay compensation for the death or injuries sustained by the occupant, when the vehicle was covered with Act Policy.

8. A perusal of Ex.R1 would show that the insured has taken the policy for the period between 29.05.2008 and 28.05.2009. The date of accident is 05.06.2008 and he has paid the total premium of Rs.2,725/- including the service tax and stamp duty. It reveals that it is not a package policy. In this regard, 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."

9. The fifth respondent is the owner of the vehicle, but he remained ex-party before the Tribunal and hence, he is not entitled for notice as per Order 41 Rule 14(4) of C.P.C., Hence, notice against R5 is dispensed with.

10. In the matter on hand, admittedly, the claimant is a occupant of the Car. 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 occupant. 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. In the light of the principles laid in the decision referred above, in my considered opinion, the appellant – Insurance Company cannot be made liable to pay the award amount to the claimants as per the directions of the Tribunal.

11. In view of the above findings of this Court, the Tribunal is directed to refund the deposited amount, if any, to the insurance company. It is also open to the respondents 1 to 4/claimants to claim the award amount from the owner of the vehicle in the manner known to law.

12. Resultantly, the civil miscellaneous appeal is allowed and the Judgment and Decree, dated 25.02.2010, in M.C.O.P.No.286 of 2008, on the file of the Motor accident Claims Tribunal / Additional Subordinate Court, Tenkasi, are set aside. No costs.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To:

1.The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Tenkasi

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

+1 CC to M/s.J.S.MURALI, Advocate (SR-1908[F] dated 22/01/2021)

C.M.A(MD)No.305 of 2011
20.01.2021

NA(CO)
KB(18.02.2021) 4P 5C