BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 20.04.2021
CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.873 of 2011
and
M.P(MD)Nos.1 of 2011 and 1 of 2013

The Branch Manager
The United India Insurance Co. Ltd.,
Branch Office No.1, Doctor Nanjappan Road,
Coimbatore. .. Appellant/2 Respondent

vs.

1.Muthukumar ..1 Respondent/Claimant
2.Sundararajan ...2 Respondent/ 1 Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree dated 07.03.2011 passed in MACOP No.34 of 2006 on the file of the Motor Accident Claims Tribunal, (Sub-Court), Palani.

For Appellant : Mr.G.Prbhu Rajadurai
For Respondents : No appearance

JUDGMENT

Questioning the award passed by the Motor Accident Claims Tribunal (Sub-Court), Palani, in MCOP No.34 of 2006, the present appeal has been filed by the Insurance Company.

2.The first respondent herein filed the claim petition claiming compensation of Rs.3,00,000/- on the ground that on 05.06.2005, he travelled in the Omni Car bearing registration No.TN-27-F-5842 on Palani-Udumalai main road. It is alleged that the driver of the Omni van drove it in a rash and negligent manner and dashed against the stationary lorry bearing registration No.DCE 1789. In the accident, he sustained injuries all over his body. Immediately, he was taken to the Udumalaipettai Government Hospital and thereafter, he was admitted in Palani Priya Hospital, where he took treatment as inpatient and spent Rs.40,000/- towards medical expenses. So, the owner as well as insurer of the omni van are liable to pay compensation.

3.In the counter filed by the appellant, the manner of the accident and the averments in the claim petition have been denied and disputed. In para 7, it has been specifically stated that the offending vehicle was insured under the 'Act' policy and no separate premium was collected to cover the occupants of the car. Hence, the insurance company is not liable to indemnify the owner of the vehicle.

4.The claimant to prove the negligence examined himself as P.W.1 and also marked Ex.P.1, First Information Report, Ex.P.3, Charge Sheet, Ex.P.4 Sketch, Ex.P.5 Motor Vehicles Inspector's Report and Ex.P.8 Judgment copy of the criminal court. The evidence of P.W.1 and the documentary evidence referred above categorically established that the accident occurred due to the negligence of the driver of the omni van.

5.The appellant examined R.W.1 Baskar and marked Ex.R.1 Copy of the Insurance Policy. The Tribunal, in para 8 of the order, has held that the appellant has proved that the vehicle had only 'Act' policy and no extra premium was paid to cover the liability of the occupants of the vehicle, however, taking note of the fact that the claimant was a third party and the vehicle had insurance coverage, directed the appellant to pay a sum of Rs.85,760/- along with interest at 7.5% per annum to the claimant at the first instance and thereafter, recover the same from the owner of the vehicle.

6.Mr.G.Prabhu Rajadurai, learned counsel for the appellant urged that the issue involved in this appeal was already decided in **CMA(MD)No.858 of 2010 dated 09.02.2021**, wherein this Court has held that in the case of 'Act' policy alone, there cannot be any direction to the Insurance Company to satisfy the award amount at the first instance and thereafter, recover the same from the owner of the vehicle. The relevant paragraphs 5, 6 and 7 of the said Judgment are extracted hereunder:-

> "5. The only issue arises for consideration in this appeal is whether the Insurance Company can be mulcted with the liability for the death of a passenger in a private car when the insured had taken only 'Act' policy.
>
> 6. The Division Bench of this Court in ***New India Assurance Co. Ltd. vs. S.Krishnasamy***, reported in ***2015 (1) TN MAC 19 (DB)***, has categorically held that when the offending vehicle had a coverage of 'Act' only policy, the Insurance Company cannot made liable to pay compensation for the passengers who are travelling in the private vehicle. 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."

7. In the light of the above decision of this Court, the order directing the appellant to pay the award amount at the first instance and recover the same from the owner of the vehicle is set aside. The liability of the insurance company is exonerated. The claimant is permitted to recover the amount from the owner of the vehicle."

7.The view taken in the **CMA(MD)No.858 of 2010 dated 09.02.2021** would squarely applicable to the facts of the present case. Hence, while confirming the quantum, the liability of the appellant is hereby set aside. It is for the claimant to recover the award amount from the owner of the vehicle.

8.With the above modification, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

To

1.The Motor Accident Claims Tribunal,
(Sub-Court), Palani.

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

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-16821[F] dated 21/04/2021)

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