BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.858 of 2010
and
M.P(MD)No.1 of 2010

New India Assurance Co., Ltd.,
Pudukkottai. .. Appellant/2nd Respondent

vs.

1.V.Jeyashree
2.Minor V.Varun
3.Minor V.Kajaraj @ Kourang
4.L.Gowtham Santh
5.G.Kanthabai .. Respondents 1 to 5/Petitioners
6.Ravichandran ..6th Respondent /1st Respondent
(Minor Respondents 2 & 3 are represented by their Guardian and mother Respondent No.1)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree, dated 29.01.2010 passed in MACOP No.2621 of 2003 on the file of the Motor Accidents Claims Tribunal (3rd Additional Subordinate Judge) Trichy.

For Appellant : Mr.G.Prabhu Rajadurai
For R1 to R5 : Mr.R.Sundar
For R6 : No appearance

J U D G M E N T

The Insurance Company has come up with this appeal challenging the order of 'pay and recovery' passed by the Motor Accident Claims Tribunal (3rd Additional Subordinate Judge), Trichy in M.C.O.P.No.2621 of 2003, on 29.01.2010.

2. Facts in nutshell:-

The respondents 1 to 5 are the legal heirs of the deceased Vikas, who died in the Motor Vehicle Accident on 13.12.2002. M.C.O.P.No.2621 of 2003 was filed by them claiming compensation of Rs.20,00,000/-. It is their case that on the date of accident, the deceased travelled in a car bearing Registration No.TSF-5497. According to them, the driver drove the vehicle in a rash and negligent manner at high speed on the Trichy-Karur main road and hit against the Thiruchendurai Government School Compound. In the impact, he sustained injuries and he was taken to Kaveri Medical College Hospital, Trichy, he succumbed to the injuries on the same day.

3. The appellant resisted the claim petition contending that the deceased was not only the passengers, but he is the owner of the car and the insured had taken Act only policy and hence, it would not cover the passengers travelled in the private vehicle.

4. Both parties adduced oral and documentary evidence. Ex.R1 is the Insurance Policy, which covers periods between 16.03.2002 and 15.03.2003. It shows that on the date of accident i.e., on 13.12.2002, the vehicle had an insurance coverage and it is mentioned that private car (Zone'A' Policy A liability only). The Tribunal has quantified the compensation at Rs.7,20,730/-. The quantum is not in dispute in this appeal.

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.

8. The learned counsel for the appellant submitted that the entire award amount has been deposited to the credit of M.C.O.P.No.2621 of 2003, on the file of the Motor Accidents Claims Tribunal (3rd Additional Subordinate Judge) Trichy and no permission was granted to the claimant to withdraw the amount and hence, the Tribunal is directed to refund the said amount to the appellant-Insurance Company.

9. In fine, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The III Additional Subordinate Judge,
Motor Accidents Claims Tribunal
Trichy.

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

+1 CC to Mr.G.PRABHU RAJADUAI, Advocate (SR-4165[F] dated 10/02/2021)

JUDGMENT MADE IN
C.M.A(MD) No.858 of 2010
09.02.2021

KM (09.03.2021) 4P 5C