IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.11.2022

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.Nos.1380 of 2013 and 1184 of 2019
and
C.M.P.No.3264 of 2019

C.M.A.No.1380 of 2013

1.Kaliammal
2.Arumugam .. Appellants

Versus

1.S.Raja

2.The New India Assurance Co.Ltd.,
No.1360, Amman Complex,
E.V.N.Road, Eroda – 638 011.

3.The Managing Director,
Tamilnadu State Transport Corporation
(Division – I, Coimbatore) Ltd.,
37, Mettupalayam Road,
Coimbatore – 641 043. .. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated

20.09.2012 made in M.C.O.P.No.573 of 2003 on the file of Motor Accident Claims Tribunal (Principal District Judge) Namakkal and allow the appeal.

For Appellants : Mr. T.L. Thirumalaisamy

For Respondents : Ms. R. Neethe Perumal, for R2
Mr. A. Sundaravadhanam, for R3
No Appearance for R1

C.M.A.No.1184 of 2019

The New India Assurance Company Ltd.,
No.1360, Amman Complex,
EVN Road,
Erode – 638 001. .. Appellant

Versus

1.Kaliammal
2.Arumugam
3.S. Raja

4.The Managing Director,
TNSTC, (Division – 1, Coimbatore)
No.37, Mettupalayam Road,
Coimbatore – 641 043. .. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 20.09.2012 made in M.C.O.P.No.573 of 2003 on the file of Motor Accidents Claims Tribunal and Principal District Judge, Namakkal.

For Appellant : Ms. R. Neethe Perumal

For Respondents : Mr. T.L. Thirumalaisamy, for R1 & R2
Mr. A. Sundaravadhanam, for R4
No Appearance for R3

C O M M O N J U D G M E N T

The Insurance Company and the claimants have filed the above appeals, challenging the order passed by the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal in MCOP.No.573 of 2003.

2. The brief facts which are necessary for disposing of the above appeals are as follows and the parties are referred to in the same ranking, as before the Tribunal.

3. CMA.No.1380 of 2013 is filed by the claimants, seeking an enhancement of the award and fastening the liability on the Insurance Company. The second respondent / Insurance Company on the other hand has filed CMA.No.1184 of 2019, to exonerate them from the liability.

4. The petitioners are the parents of one Shanmugasundaram, who had died in a road accident. It is their case that Shanmugasundaram, who is aged about 21 years and working as an operator of the JCB vehicle and also doing agricultural activities, was travelling in a motorcycle, bearing registration No.TN 33 K 2288, as a pillion rider on 22.08.2008, at about 9.30 hours. One Palanisamy had driven the motorcycle and he had driven the same in a rash and negligent manner and dashed against the bus bearing registration No.TN 38 N 0768, coming from the opposite direction. The bus driver had also driven his vehicle in a rash and negligent manner and it is the negligence of both, which had resulted in the accident. The petitioners would therefore claim a sum of Rs.7 lakhs as compensation before the Tribunal.

5. The 2^{nd} respondent in the above petition is the Transport Corporation. The 1^{st} respondent and the 3^{rd} respondent remained ex parte and it was the second respondent / Insurance Company, who had filed its counter. The primary defence which was taken by the Insurance Company was that the policy cover for the motorcycle was only an act policy and

therefore, did not cover the risk of a third party, namely the pillion rider. Therefore, since there is no policy cover, the Insurance Company cannot be made liable to compensate the petitioners.

6. Without prejudice, they also raised the defence that the claim was excessive. The Tribunal, on considering the evidence on record, came to the conclusion that the accident had occurred only on the account of the rash and negligent driving of the two wheeler driver, Palanisamy which vehicle was insured with the second respondent. The second respondent had filed Ex.R1 policy, which is an Act only policy and it was the contention of the 2nd respondent / Insurance Company that they were not liable to compensate the petitioners. However, the Tribunal, though they had agreed that the second respondent was not liable to pay compensation had however on the basis of negligence observed that the second respondent should pay a sum of Rs.50,000/- under the "No fault liability". The Insurance Company was directed to pay the above sum and the petition as against the Transport Corporation was dismissed since negligence was squarely on the side of the deceased driver of the Motorcycle. Challenging the fact that they have been

directed to pay the sum of Rs.50,000/- under the no fault liability clause, despite the policy being only an Act policy, the Insurance Company is before this Court.

7. The petitioners have filed the appeal seeking an enhancement since no amounts have been granted under any of the other heads, except for the sum of Rs.50,000/- under the no fault liability clause.

8. Heard the learned counsel on either side.

9. The Tribunal has come to the conclusion that on the basis of evidence that the accident had occurred only on account of the negligence of the driver of the first respondent, motorcyclist. The policy in respect of the motorcycle which has been marked as Exs.P6 and R1, shows that the said policy was an act only policy.

10. Since the policy is an act only policy, it would not cover the risk of any third party. Once it is proved that the policy does not cover the 3rd party, the award directing them to pay Rs.50,000/- under the head of no fault liability also has to be set aside and accordingly, it is set aside. The second respondent / insurer is exonerated from the payment and the said sum of Rs.50,000/- shall be paid by the 1st respondent, owner of the vehicle. The Tribunal has held that the driver of the 3rd respondent is not responsible for the accident and therefore the dismissal of the claim petition against the 3rd respondent is confirmed.

11. In the result, the CMA.No.1184 of 2019 is allowed and the second respondent / Insurance Company is exonerated. CMA.No.1380 of 2013 is partly allowed, as the amount of Rs.50,000/- is payable by the first respondent to the claimants, together with interest at 7.5% per annum from the date of petition till the date of realisation. No costs. Consequently, connected miscellaneous petition is closed.

24.11.2022

AT
Index: Yes/ No

P.T.ASHA,J.

AT

To
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No.1360, Amman Complex,
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