IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2022
CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2716 of 2014
and M.P.No.1 of 2014

United India Insurance Company Ltd.,
90/CA, Balakrishna Mandapam Road,
Mettupalayam Road,
Coimbatore.

...Appellant/3rd Respondent

Vs.

1.Anantharaj
2.Daisy Rani
3.Minor Balaji
Rep by his natural guardian father
namely Anantharaj ..1 to 3 Respondents/1 to 3 Petitioners
4.Palanivel ..4th Respondent/1st Respondent
5.K.Vijayalakshmi ..5th Respondent/2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.02.2014 in M.C.O.P.No.749 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Coimbatore.

For Appellant	:	Mrs.I.Malar
For Respondents	:	Mr.M.Lokesh for R1 to R3 No appearance for R4 & R5

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 07.02.2014 in M.C.O.P.No.749 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Coimbatore.

2.The appellant/Insurance Company is the 3rd respondent in M.C.O.P.No.749 of 2012 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Coimbatore. The respondents 1 to 3 filed the said claim petition against the respondents 4 and 5 as well as the appellant, claiming a sum of

Rs.21,00,000/- as compensation for the death of one Magendran, who died in the accident that took place on 03.05.2010.

3.According to the respondents 1 to 3, on the date of accident i.e., 03.05.2010 at about 2.30 a.m., the said Magendran was travelling in the car bearing Registration No.TN 41 9595 belonging to the 5th respondent to arrange the marriage of son of the respondents 4 and 5 and while returning from the marriage hall, the 4th respondent drove the car in a rash and negligent manner, hit the road side tree and caused the accident. Due to the injuries sustained in the accident, the said Magendran died. The respondents 1 to 3 have filed the claim petition claiming a sum of Rs.21,00,000/- as compensation against the respondents 4 and 5 as well as the appellant.

4.The respondents 4 and 5 filed counter statement denying all the averments made in the claim petition and stated that the accident did not occur due to the negligence of the 4th respondent. At the time of accident the car was insured with the appellant/Insurance Company and the appellant/Insurance Company is only liable to pay compensation to the respondents 1 to 3. In any event, the compensation claimed by the respondents 1 to 3 are excessive and prayed for dismissal of the claim petition.

5.The appellant/Insurance Company filed counter statement stating that on the date of accident, the car was insured with the appellant/Insurance Company but the policy issued by the appellant/Insurance Company is only an Act policy. The 5th respondent has not paid any additional premium to cover the risk of occupants of the car. The policy covers only for the risk of third party. The deceased is not a third party and hence, the appellant/Insurance Company is not liable to pay compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and examined one Pradeep, co-passenger as P.W.2 and marked 8 documents as Exs.P1 to P8. The appellant/Insurance Company examined their official one Neela Lakshmi as R.W.1 and marked 6 documents as Exs.R1 to R6.

7.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to negligence of the 4th respondent. With regard to liability, the Tribunal considering the evidence of R.W.1, the official of the appellant/Insurance Company and judgment relied on by the counsel for the respondents 1 to 3 held that the deceased was a third party as he travelled in the private vehicle and directed the appellant/Insurance Company as well as respondents 4 and 5 being insurer and owners of the offending vehicle to pay a sum of Rs.6,52,000/- as compensation to the respondents 1 to 3.

8.Challenging the said award dated 07.02.2014 in M.C.O.P.No.749 of 2012, the appellant/Insurance Company has come out with the Civil Miscellaneous Appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to consider that the policy issued by the appellant/Insurance Company is only an Act policy and it does not cover the risk of occupants of the car, who travelled in the offending vehicle at the time of accident. The Tribunal erred in holding that the deceased was a third party and not a passenger as he travelled in the private car. At the time of accident, four persons travelled as passengers, but the 5^{th} respondent has not paid any additional premium to the passengers travelling in the private car and hence, the appellant-Insurance Company is not liable to pay any compensation. In any event, the Tribunal ought to have deducted 50% instead of $1/3^{rd}$ towards personal expenses of the deceased and prayed for allowing the appeal. In support of his contentions, the learned counsel relied on the following judgments:

(i) 2006 (1) TNMAC 36 (SC) [United India Insurance Company Limited, Shimla Vs. Tilak Singh and other]

(ii) 2008 4 Supreme 329 (DB) [Oriental Insurance Company Limited Vs. Sudhakaran.K.V and others]

(iii) 2015 (1) TNMAC 19 (DB) [The New Indian Assurance Company Limited Vs. S.Krishnasamy and others]

(iv) Order of this Court dated 28.02.2019 in C.M.A.No.2696 of 2018 (United India Insurance Company Limited Vs. Sathish Kumar and another)

(v) Order of this Court dated 06.10.2020 in C.M.A.No.1408 of 2016 (United India Insurance Company Limited Vs. N.Thangavel and others)

10.Per contra, the learned counsel appearing for the respondents 1 to 3 contended that the deceased Magendran, who travelled in the offending vehicle at the time of accident and died in the accident is a third party as per the Insurance Policy between the appellant/Insurance Company and owners of the vehicle. Even in the Act policy, the appellant/Insurance Company cannot be exonerated. The Motor Vehicle's Act is a benevolent legislation and the appellant/Insurance Company must be directed to pay the compensation. Even in the case of Act policy, the appellant/Insurance Company is liable to pay the compensation for the death of an occupant, who travelled in the car, due to rash and negligent driving by driver of the car. The learned counsel appearing for the respondents 1 to 3 further contended that the Tribunal after considering all the materials, awarded compensation, which is not excessive and prayed for dismissal of the appeal. In support of his contentions, the learned counsel relied on the following judgments:

(i)2017 (1) TNMAC 289(SC) [Manuara Khatun and others Vs.Rajesh Kr. Singh and others]

(ii)2017 SCC Online Mad 34417 [The United India Insurance Company Limited Vs. Kannammal and others]

11.The learned counsel appearing for the appellant/Insurance Company in reply contended that the judgments relied on by the learned counsel appearing for the respondents 1 to 3 are not applicable to the facts of the present case. The Hon'ble Apex Court in the judgment reported in 2017 (1) TNMAC 289 (SC) cited supra, has not decided the issue of liability of Insurance Company with regard to Act policy. The issue decided before the Hon'ble Apex Court was only with regard to gratuitous passengers and hence, the said judgment is not applicable to the facts of the present case and prayed for setting aside the award of the Tribunal.

12.Though notice has been served on the respondents 4 and 5 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

13.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 1 to 3 and perused the entire materials on record.

14.From the materials on record, it is seen that the policy issued by the appellant/Insurance Company was marked as Ex.R1 and it is now denied by the respondents 1 to 3 that the policy issued by the appellant/Insurance Company is only an Act policy. The policy covers only a third party liability and the 5th respondent has not paid any additional premium to cover the risk of occupants of the car. The issue whether in the Act policy, the Insurance Company is liable to pay the compensation to the occupants of the car, was considered by the Hon'ble Apex Court in the judgment reported in 2012 (2) TN MAC 637 (SC) [National Insurance Company Limited vs. Balakrishnan and another]. The Hon'ble Apex Court in paragraph Nos.4 to 6 of the said judgment held that the Insurance Company is not liable to pay any compensation for bodily injury or death of the passengers, who travelled in the car. The Tribunal without considering the above judgment, erred in holding that the deceased was a third party and not a passenger travelled in the private car. The said finding of the Tribunal is erroneous. The occupant of the car is not a third party as held by the Hon'ble Apex Court in the judgment reported in 2012 (2) TN MAC 637 (SC) cited supra. Applying the ratio in the said judgment, the award of the Tribunal holding that the deceased was a third party and directing the appellant/Insurance Company to pay the compensation along with the respondents 4 and 5 is not correct. The judgment of the Hon'ble Apex Court relied on by the learned counsel appearing for the respondents 1 to 3 is not applicable to the facts of the present case. A reading of the said judgment reveals that the Hon'ble Apex Court has dealt with the case of the gratuitous passengers. The issue of an Act policy was not before the Hon'ble Apex Court in the said judgment. On the other hand, the Hon'ble Apex Court in the judgment reported in 2012 (2) TN MAC 637 (SC) referred to above has specifically dealt with the scope of Comprehensive policy, Act policy and liability of insurer under both the policy and concluded that the insurer is not liable to pay compensation to the passengers, when owner of the car has not paid any additional premium to cover the risk of occupants of the car. The judgment of the Hon'ble Apex Court reported in 2012 (2) TN MAC 637 (SC) referred to above is squarely applicable to the facts of the present case. Applying the said ratio to the facts of the present case, the award of the Tribunal fastening the liability on the appellant alone is set aside. In view of the same, the respondents 4 and 5, owners of the car are liable to pay compensation to the respondents 1 to 3.

15.In the result, this Civil Miscellaneous Appeal is allowed and the amount awarded by the Tribunal at Rs.6,52,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and cost is confirmed. The respondents 4 and 5, owners of the vehicle are directed to deposit the amount awarded by the Tribunal along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.749 of 2012. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with proportionate interest and costs after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 3rd respondent is directed to be deposited in any one of the Nationalized Banks, till the minor 3rd respondent attains majority. On such deposit, the 1st respondent, being the father of the minor 3rd respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 3rd respondent. The appellant/Insurance Company is permitted to withdraw the award amount, lying in the deposit to the credit of M.C.O.P.No.749 of 2012, if the entire award amount has already been deposited by them. It is made clear that if the respondents 1 to 3 have already withdrawn the entire award amount, the appellant/Insurance Company is not entitled to recover the same from the respondents 1 to 3. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vkr
To

1.The III Additional District Judge,
Motor Accident Claims Tribunal,
Coimbatore.

2.The Section Officer,
VR Section, High Court,
Madras.

+1 CC to Mr.M.Lokesh, Advocate sr 3908.

C.M.A.No.2716 of 2014
and M.P.No.1 of 2014

GMR(CO)
SP(03/03/2022)