IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.11.2022

Delivered on : 06.12.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1389 of 2017

The Divisional Manager,
The Oriental Insurance Co. Ltd.,
No.17 A, Krishnagiri Road, SKS Complex,
Ranipet 632 401, Vellore District. ...Appellant

Vs

1.Santhy

2.Minor Kaviyarsu

3.Minor Jeevitha

4.Valliammal

5.G.Perumal ...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgement and Decree in M.A.C.T.O.P.No.423 of 2009 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Vellore dated 18.08.2014.

For Appellant : Mr.M.Krishnamoorthy

For Respondents 1 to 4. : Mr.V.Pari Vallal

JUDGEMENT

In its enthusiasm to award compensation to a victim who had died on account of the use of motor vehicle, the Tribunal below has twisted out of context the meaning of the word *"third party"* vis-a-vis an Insurance Policy. The facts in brief are as follows.

2. The petitioners before the Motor Accident Claims Tribunal, Principal District Court, Vellore in M.C.O.P.No.423 of 2009 had filed the above claim petition against one Perumal and the appellant herein seeking compensation of a sum of Rs.15,00,000/- for the death of one Ramesh in a road accident that had taken place on 29.07.2000.

3. The occurrence itself makes interesting reading. It is stated that the deceased Ramesh and one Baskar of Sethumadurai Village had taken a load of sand to one Balaraman at Sainathapuram, in a tipper lorry bearing registration No.TN 23 AC 3651. The said Baskar had given instructions to the driver of the lorry to unload the sand. The driver inturn had reversed the lorry rashly and negligently and with great speed, as a result of which the lorry hit one Pashan's compound wall. As a result of the impact, the lorry had fallen upon Ramesh who was standing there. The injuries sustained by him were fatal in nature

resulting in his instantaneous death.

4. The accident had occurred only on account of the rash and negligent driving of the driver of the lorry who had been impleaded as the 1st respondent. The 1st respondent was the driver and the deceased Ramesh was the owner of the lorry.

5. The appellant / Insurance Company which was arrayed as the 2nd respondent in the claim petition had filed a counter inter alia contending that the deceased Ramesh was a registered owner of the lorry in question and neither the owner nor the legal heirs of the vehicle had been impleaded as a party to the proceedings. Therefore, it is the contention of the Insurance Company that since their liability to compensate is coexistent with their insured, the absence to implead the insured absolves the Insurance Company from making any payments.

6. That apart, the deceased being the owner of the vehicle was not a third party and therefore the Insurance Company was not liable to compensate the petitioners for the death since the vehicle did not possess any personal accident policy and neither was the additional premium paid. Therefore, the appellant / Insurance Company would seek to have themselves absolved. They had also questioned the quantum of compensation claimed as being excessive.

7. The Tribunal below on considering the evidence on record and after observing that no additional premium had been paid for the owner proceeded to observe that in all the Judgements that had been relied on by the appellant / Insurance Company the owner of the vehicle was also the driver of the vehicle. However, in the instant case, the deceased was standing behind the vehicle and therefore was a third party. Therefore, the Tribunal had held that the appellant / Insurance

Company is liable to pay compensation. Ultimately, compensation of a sum of Rs.8,35,000/- together with interest at 7.5% was granted.

8. Aggrieved by the same, the appellant / Insurance Company is before this Court.

9. Mr.M.Krishnamoorthy, learned counsel appearing on behalf of the appellant / Insurance Company would submit that the Insurance Company had to be exonerated since the petitioners are the legal heirs of the owner of the vehicle itself. The learned counsel would further submit that the policy did not have a personal accident cover and there was no third party involvement in the accident.

10. The learned counsel would submit that the liability of the Insurance Company runs parallel with its insured and unless the insured is impleaded as party (*in the instant case he is passed away*

therefore his legal heirs ought to have been impleaded) the claim has to necessarily fail. The learned counsel would rely upon the following Judgements:

"1. ***2004 (2) TN MAC 144 (SC)*** - Dhanraj Vs. New India Assurance Co. Ltd., another.

2. ***2011 (1) TN MAC 227 (DB)*** - United India Insurance Company Limited Vs. P.Shanthi and others.

3. ***2013 (1) TN MAC 781 (SC)*** - New India Assurance Co. Ltd., Vs. Prabha Devi and others.

4. ***2013 (1) TN MAC 120 (DB)*** - Komeravel Gounder and others Vs. Baja Allianz General Insurance Company.

5. ***2017 (2) TN MAC 674 (DB)*** - Divisional Manager, United India Insurance Company Limited Vs. R.Rekha and others.

6. ***2020 (2) TN MAC 490*** - Iffco Tokiyo General Insurance Co. Ltd., Vs. Chinnathambi and others.

7. ***2022 (1) TN MAC 633 (DB)*** - Oriental Insurance Co. Ltd., Vs. Radhadevi.

11. Per contra, Mr.Pari Vallal, learned counsel appearing on behalf of the respondents 1 to 4 / petitioners would submit that the deceased Ramesh had died on account of the use of the lorry and at the time of the accident, he was not driving the vehicle nor was he a passenger. The deceased Ramesh was only standing near the lorry and therefore, the finding of the Tribunal below has to be confirmed.

12. The learned counsel would further rely upon an unreported Judgement in ***M.C.O.P.No.315 of 1999*** of the Motor Accident Claims Tribunal, Ranipet, wherein, in a similar circumstances, the Tribunal had awarded compensation which was reversed by orders of this Court in ***C.M.A.No.511 of 2011*** dated 23.07.2012. However, the Hon'ble Supreme Court had upheld the orders of the Tribunal. Therefore, the

learned counsel would contend that since the present claim petition is on the very similar set of facts, the above order would enure to the present case.

13. Heard the learned counsels on the either side.

14. The legal heirs of the owner of the vehicle who had died have filed the claim petition. Their contention is that while reversing the lorry, the lorry had hit a wall and on account of the impact, the lorry had fallen on to the deceased. The policy in question indicates that the policy is a package policy. The policy covers only a basic TP cover.

15. A perusal of Ex.R.1, Policy shows that there is no coverage for the death or bodily injury to the owner and it only covers third party risks. Therefore, taking into consideration the Judgements cited on the side of the appellant / Insurance Company, this Court has to analyse as

to whether the petitioners are entitled to any compensation.

16. In the Judgement reported in ***2004 2 TN MAC 144 (SC) - Dhanraj Vs. New India Assurance Co. Ltd., and another,*** the Hon'ble Supreme Court was considering the liability of the Insurance Company where the owner had sustained injuries, after extracting the provisions of Section 147 of the Motor Vehicles Act, the learned Judges have observed as follows:

> *"Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle."*

17. The above Judgement has been followed by the Hon'ble Supreme Court in a later Judgement reported in ***2013 (1) TN MAC 781 (SC) - New India Assurance Co. Ltd., Vs. Prabha Devi and others,*** where once again the claim petition had been filed seeking compensation for the death of the owner of the vehicle who had died when the vehicle had overturned. The learned Judges relied upon the Judgement in ***Dhanraj***, supra and held that in view of the above ratio of law, the claim could not be allowed.

18. The Judgement in ***Dhanraj*** is also followed by the Division Bench of this Court in the Judgement reported in ***2013 (1) TN MAC 120 (DB) - Komeravel Gounder and others Vs. Bajaj Allianz General Insurance Company.***

19. As regards the argument put forward by the learned counsel for the appellant / Insurance Company that the Insurance Company is not liable since no additional premium had been paid to cover the death or injury of the owner of the vehicle, reliance can be placed on the judgement relied on by the counsel for the appellant Insurance Company of the Division Bench of this Court reported in ***2017 (2) TN MAC 674 (DB) - Divisional Manager, United India Insurance Co. Ltd., Vs. R.Rekha and others.*** This is a case where the owner of the vehicle was riding pillion and the accident had occurred on account of rash and negligent driving of the driver of the two wheeler. The Bench had observed as follows:

> *"As far as the present case is concerned, the deceased was traveling as a pillion rider in the two wheeler owned by him. Admittedly, the deceased himself was the owner of the two wheeler. At the time of accident, the driver of the two wheeler suddenly applied brake and*

hit a cyclist which led to the accident. No other motor vehicle has been involved in this case. Thus, the accident did not involve any other motor vehicle other than the one in which the deceased was traveling as a pillion rider. Therefore, the liability of the insurance company is only to the extent of indemnification of the insured against the third person or in respect of damages of property. While so, the insurance company cannot be fastened with any liability under the provisions of the Motor Vehicles Act for the death of the deceased who himself was the owner of the vehicle and when no other motor vehicle was involved in this case. Therefore, the question of the insurer being liable to indemnify the deceased/owner of the vehicle does not arise. Since the deceased himself was the owner of the two wheeler and not a third party, the claim petition filed by the claimants will not come within the purview *of Section 146 or 147 of The Motor Vehicles Act for the purpose of payment of compensation. Therefore, we hold that the impugned Judgment and Decree of the Tribunal cannot be sustained."*

20. Therefore, in the light of the above Judgements the Tribunal had committed an error in holding that the Insurance Company is liable to pay compensation. The term *third party* does not relate to the vehicle but to the Insurance Policy, which is a contract between the insured and the insurer. The Tribunal below has adopted a novel method on considering the term *third party* by interpreting the said term as being one not in relationship to the contract of insurance but in relation to the vehicle. The learned Judge has interpreted the said term by holding the deceased is a third party since he was not inside the vehicle at the time of the death, but was only outside the said vehicle.

21. In view of the above discussion, the Civil Miscellaneous Appeal is allowed. The appellant / Insurance Company is permitted to withdraw the amounts deposited by them, after following due process of law. No costs.

06.12.2022

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Index : Yes/No
Speaking order/non-speaking order

To
The Motor Accidents Claims Tribunal
(Principal District Judge),
Vellore

P.T.ASHA, J.,

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Pre-delivery order in
C.M.A.No.1389 of 2017

06.12.2022