IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.01.2022

Pronounced on : 25.03.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No. 1668 of 2017
and
C.M.P.No. 8935 of 2017

The Manager,
M/s. Oriental Insurance Company Limited,
2nd Floor, S.K.S. Plaza
R.S. Road, Near Police Station,
Perundurai. ... Appellant

Versus

1. Shanmughasundaram
2. M. Marimuthu ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.10.2016 made in M.C.O.P.No.85 of 2013 on the file of Motor Accident Claims Tribunal, I Additional District Court, Tiruppur.

For Appellant :Mr. M.B. Gopalan

For Respondents :Mr.C. Munusamy

JUDGMENT

This appeal is filed by the appellant/Insurance Company questioning the validity of the judgment and decree dated 03.10.2016 passed in MCOP No. 85 of 2013 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Tiruppur.

2. The claim petition was filed by the claimant/1st respondent herein, who is the brother of the deceased Senthilkumar. According to the claimant, on 30.10.2012 at about 20.00 hours, the first respondent in the claim petition and second respondent herein was driving the motor cycle bearing Registration No.TN-33-AX-3936 in which the deceased Senthilkumar

was riding pillion. When the motor cycle was proceeding near a place called Kaliappa Asari house on the service road of National Highways 47, near Pallagoundenpalayam, the first respondent said to have driven the two wheeler in a rash and negligent manner and in order to avoid hitting a stray dog, he swear the vehicle and in that process fell down. In the impact, the deceased Senthilkumar was thrown of the vehicle and sustained severe injury. The first respondent in the claim petition, who had driven the two wheeler, also sustained severe injuries in the same accident. Both the first respondent/driver and deceased were taken to Government Hospital, Erode, where, inspite of treatment, the deceased died within a few hours. According to the claimant, the deceased was 35 years old and he was hale and healthy and earining a sum of Rs.15,000/- per month as a Tank Man at Nadupatty Panchayat. Therefore, for the death of the deceased, the claim petition was filed claiming a total sum of Rs.15,00,000/- as compensation.

3. The claim petition was resisted by the appellant/Insurance Company contending that the deceased is not a third party to the vehicle driven by the first respondent. Therefore, as per the policy issued by the appellant, the deceased cannot be regarded as a third party disentitling the claim from claiming any compensation, the Insurance Company also denied the age, income and other particulars were furnished in the claim petition and prayed for dismissal of the claim petition.

4. Before the Tribunal, the claimant examined himself as PW1 and two other witnesses were examined as PW2 and PW3. Ex.P1 to Ex.P7 were marked on the side of the claimant. On the side of the respondents in the claim petition, one Ganesan was examined as RW1 and Ex.R1 Motor Insurance Certificate was marked.

5. The Tribunal taking note of the oral and documentary evidence has concluded that the accident was as a result of rash and negligent driving of the first respondent in the claim petition. In respect of liability, the Tribunal considered the evidence of RW1 who has stated that the owner of the two wheeler had also paid third party premium. Taking note of the above deposition of RW1, the Tribunal held that the Insurance Company is liable to pay compensation. As regards quantum, eventhough it was claimed that the deceased was in receipt of Rs.15,000/- monthly salary, the Tribunal taken a sum of Rs.6,000/- per month as notional income. As the deceased being a bachelor, the Tribunal deducted 50% towards personal expenses, added 50%

towards future prospects and by applying multiplier “16” awarded a total sum of Rs.8,64,000/- towards loss of dependency. Under non pecuniary compensation, the Tribunal awarded a sum of Rs.20,000/- towards loss of love and affection, Rs.10,000/- towards funeral expenses and Rs.5000/- transportation expenses. In all a total sum of Rs.8,99,000/- was awarded by the Tribunal.

6. Assailing the award passed by the Tribunal, the learned counsel for the appellant vehemently contended that the Tribunal erred in concluding that the appellant is a third party to the Insurance Policy. It is his contention that the policy in question is an Act policy and the liability of the Insurance Company is restricted only to a sum of Rs.1,00,000/-. It is also his contention that as a pillion rider, the deceased will not be covered under the Genral Policy of Insurance availed by the first respondent in the claim petition and who is the owner of the two wheeler. To buttress this submission reference was made to the decision of the Hon'ble Supreme Court in AIR 2006 SC 1576 reported in United Insurance Company Limited Shimla v. Tilak Singh and Ors., Reference was also made to the decision of the Hon'ble Supreme Court in AIR 2013 SC 473 in the case of National Insurance Company Limited v. Balakrishnan and Ors.
Yet another decision of the Hon'ble Supreme Court of India in the case of Bhagyalakshmi and Others v. United Insurance Company Limited and another arising out of SLP (C) No.10136 of 2007 in Civil Appeal No. 3335 of 2009 was relied on by the learned counsel for the appellant. In Bhagyalakshmi and Ors case mentioned supra, the decision rendered by the Hon'ble Supreme Court of India in National Insurance Company Limited v. Balakrishnan and Ors mentioned supra and the other decision in United India Insurance Company, Shimla v. Tilak Singh and Ors., were also referred to. These decisions have been relied upon to contend that a comprehensive/package policy would cover the liability of the insurer for payment of compensation for occupant of a car but an Act policy stands on a different footing from a comprehensive package policy. Therefore, it was contended that the Insurance Company is not liable to pay compensation to the appellant.

7. It was also contended that the quantum of compensation awarded by the Tribunal is excessive. According to the learned counsel for the appellant, the claimant/first respondent herein is only a brother of the deceased and he is not dependent or depending on the income of the deceased. While so, the Tribunal ought not to have awarded a huge sum of Rs.8,99,000/- as compensation to the appellant.

8. On the above contentions, this Court heard the learned counsel appearing for the claimant/1st respondent and perused the records.

9. On appreciation on the above submissions of the learned counsel appearing for the appellant, this Court is of the view that such contentions cannot be countenanced and liable only to be rejected for the simple reason that the appellant/Insurance Company, at the outset, did not file the insurance policy as a document before the Tribunal. Eventhough repeatedly it was contended that the policy in question is an Act policy, the appellant has not discharged their basic duty in marking the policy document before the Tribunal for consideration. The appellant only examined as RW1 and in fact, he has stated that additional premium was paid by the owner of the two wheeler to cover third party risk. Even before this Court, the appellant has not produced the copy of the insurance policy to substantiate their plea that the policy in question is an Act policy. Therefore, the submissions of the counsel for the appellant do not merit acceptance.

10. In the decision of Bhagyalakshmi and others mentioned supra, the Honourable Supreme Court referred to the decision of the Honourable Supreme Court in United Insurance Company Limited Shimla v. Tilak Singh and Ors., mentioned supra. In Bhagyalakshmi case, the Honourable Supreme Court, in para No.26, has specifically referred to the decision of this Court in Royal Sundaram Insurance Co., Limited vs. V.A. Meenakshi and others (C.M.A. No.312 of 2019). In that decision, this Court has held that if the plea of the Insurance Company that the Policy of Insurance in question is only an Act Policy, the occupants of the Car in that case namely wife and children, who were permanently disabled, will be disentitled from getting any compensation. Therefore, this Court brushed aside the claim of the Insurance Company in contending that it is an Act Policy and it will not cover the occupants of the car or they will be regarded as a third party to the insurance policy. In effect, it was held by this Court that compensation cannot be denied to the third party occupant in a car covered by a comprehensive policy. By referring to the decision of this Court in C.M.A. No. 312 of 2009, mentioned above, the Honourable Supreme Court, in Bhagyalakshmi case has only opined that the issue requires consideration by a larger bench. Therefore, it is evident that the decisions relied on by the counsel for the appellant will not be of any use to the defence pleaded by them.

11. Even though the learned cousnel for the appellant has impressed upon the three decisions of the Hon'ble Supreme Court mentioned supra and contended that the pillion rider cannot be regarded as a third party as it is against the conditions of policy, as mentioned above, in the absence of marking the copy of the policy document, the applicability of those decisions to the case on hand cannot be considered by this Court. The Insurance Company has failed to mark the policy document before the Tribunal or before this Court. While so, the submissions of the learned counsel for the appellant cannot be considered by this Court. Therefore, this Court holds that the Insurance Company is liable to pay compensation to the appellant.

12. As regards quantum, the deceased was a bachelor and 35 years old at the time of the accident. The claimant/first respondent is his brother. It is stated that the deceased was earning a sum of Rs.15,000/- per month as salary. However, in the absence of any document forthcoming from the claimant, the Tribunal fixed a sum of Rs.6,000/- as his notional income, awarded 50% towards future prospects, deducted one half towards personal expenses and arrived at a sum of Rs.8,64,000/- as compensation towards loss of depency. That apart under non pecuniary benefit, the Tribunal awarded a sum of Rs.20,000/- towards love and affection, Rs.10,000/- for funeral expenses and Rs.5,000/- towards transportation expenses. Taking note of the overall facts and circumstances of the case, this Court is of the view that the compensation awarded by the Tribunal is reasonable and fair and it does not require interference by this Court.

13.In the result, the judgment and decree dated 03.10.2016 made in M.C.O.P.No.85 of 2013 on the file of Motor Accident Claims Tribunal, I Additional District Court, Tiruppur is confirmed. The appeal filed by the appellant fails and accordingly it is dismissed. Consequently, connected Civil Miscellaneous Petition is also closed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

msm

To

1.The I Additional District Judge,
Motor Accident Claims Tribunal,
Tiruppur.

2.The Section Officer
V.R. Section, High Court,
Chennai.

C.M.A.No.1668 of 2017

skm[co]
srg 27/04/2022