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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.09.2022

PRONOUNCED ON: 23.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.601 of 2022
and
C.M.P.(MD)No.5119 of 2022

The Divisional Manager,
United India Insurance Company Limited,
2nd Floor, No.7, West Veli Street,
TVS Building,
Madurai-1. : Appellant / 2nd Respondent

Vs.

1.Meena
2.Minor A.Ragavi
3.Minor A.Abhishek
(Minors 2 and 3 are represented by
their mother and guardian 1st respondent

4.Lakshmi : Respondents 1 to 4 / Petitioners 1 to 4

Natarajan (died)

6.V.Saravanan : 5th Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated

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10.11.2021, passed in M.C.O.P.No.1013 of 2018, on the file of the Motor Accident Claims Tribunal / the Special District Court to deal with the Motor Accident Cases, Madurai.

For Appellant : Mr.I.Suthakaran

For Respondents :Mr.K.Hema Karthikeyan for R.1 to R.3

: No Appearance for R.4 and R.5

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award dated 10.11.2021, passed in M.C.O.P.No.1013 of 2018, on the file of the Motor Accident Claims Tribunal/Special District Court to deal with Motor Accident Cases, Madurai.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.18,01,500/- with interest at 7.5% pa., and costs to the claimants for the death of one Ayyam Perumal, who died consequent to an accident occurred on 26.12.2017, challenged the liability mulcted on it.

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3. The case of the claimants is that on 26.12.2017 at about 15.00 hours, when the deceased was travelling as a pillion rider in Star Sports two wheeler bearing Registration No.TN-59-AR-0195 in Katathevanpatti to Kallapatti road near Raman thottam, Usilampatty, the rider of the two wheeler had proceeded in a rash and negligent manner and suddenly applied brake due to the crossing of a dog and as a result of which, Ayyam Perumal sustained grievous injuries and died on the spot and that the accident was occurred only due to the rash and negligent driving of the two wheeler.

4. The defence of the Insurer is that the claimants have suppressed the real accident occurred, that since the Insurance Policy obtained by the first respondent is an Act policy, the pillion rider cannot be compensated, that the Act policy does not qualify and cover the pillion rider, that there is no nexus between the Insurer and the death of Ayyam Perumal, that the accident was occurred only due to the negligence on the part of the deceased and the two wheeler rider and that therefore, they are not liable for the claim.

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5. During enquiry, the claimants have examined the first claimant as P.W.1 and one Muthusamy alleged to be the occurrence witness as P.W.2 and exhibited 13 documents as Exs.P.1 to P.13. The appellant-Insurer has examined its Assistant Executive Officer as R.W.1 and exhibited the copy of the Insurance Policy as Ex.R.1. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both sides, has passed the impugned award dated 10.11.2021 holding that the accident was occurred only due to the rash and negligent driving of the rider of the two wheeler, directing the Insurer to pay the compensation of Rs.18,01,500/- with interest at 7.5%pa., and costs and then to recover the same from the first respondent. Aggrieved by the said award, the Insurer has preferred the present Civil Miscellaneous Appeal.

6. The learned Counsel for the appellant would contend that F.I.R., was registered against one Alagarsamy upon false complaint, that the complainant himself admitted his guilt and deposed that he lodged a false complaint in order to get insurance claim for the loss of his brother, that the accident was occurred only due to the rash and negligent riding of the

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motorcycle by the deceased himself, that since the deceased is the tort feasor, his legal representatives have no right to claim compensation, that though the accident was occurred on 26.12.2017, the complaint was lodged on 02.01.2018 and that the policy availed by the owner of the vehicle is a liability only policy and as such, the claimants are not liable to get any compensation.

7. The appellant has also filed a petition in C.M.P.(MD)No.5119 of 2022 for the reception of additional evidence. In the affidavit filed in support of the said petition, it has been stated that since they have come to know about the actual manner of accident, subsequently, they were constrained to file the above application seeking permission to produce the copy of the final report filed in Cr.No.1 of 2018, F.I.R., in Cr.NO.1 of 2019, Accident Register, Rough sketch and Motor Vehicle Inspection Report as additional evidence.

8. Though the Insurer in the main counter statement has alleged that the claimants have suppressed the real mode of accident and has given a false and distorted version to suit their claim, they have not elaborated anything further. Moreover, the Insurer has cross-examined

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the witnesses examined by the claimants on the basis of the stand taken that the deceased was a pillion rider and the two wheeler was driven by his brother Alagarsamy. Now the appellant has taken a new stand with regard to the manner of the accident that the deceased had driven the two wheeler and he was alone responsible for the accident. R.W.1 – staff attached to the appellant Company, in his evidence, would say that the deceased was the pillion rider and as such, the policy being the Act policy, is not covered for the pillion riders. But admittedly, there is no pleadings and evidence with respect to the stand now taken by the appellant. In the absence of any pleadings and evidence, the requisition of the Insurer to receive the additional evidence to prove the mode of accident, now canvassed in the appeal, cannot be entertained and hence, the petition is liable to be dismissed. Accordingly, C.M.P.(MD)No.5119 of 2022 is dismissed.

9. As already pointed out, the main defence of the appellant-Insurer is that the policy in question was covered by the Act policy and the same would not cover the pillion rider. Admittedly, the vehicle Star Sports two wheeler bearing Registration No.TN-59-AR-0195 is owned by the first respondent. According to the claimants, the said two wheeler

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was driven by one Alagarsamy and the deceased travelled as a pillion rider at the time of accident. It is also not in dispute that the policy under Ex.R.1 is a " liability only policy". The Hon'ble Supreme Court in catena of decisions, has reiterated the position that the pillion rider who dies or gets injured in a road accident, is not entitled to third party insurance claim and that if a vehicle is covered only by a third party insurance, neither the owner nor the passengers are covered, unless the contract of the insurance is specific that it would cover the others too.

10. At this juncture, it is necessary refer the decision of this Court in ***United India Insurance Ltd., Vs. Sathish Kumar and another*** (C.M.A.No.2696 of 2018, dated 28.02.2019), wherein, after referring to various decisions of the Hon'ble Supreme Court and this Court, this Court has specifically held that in an Act policy, the pillion rider in a two wheeler is a gratuitous passenger and the Insurer is not liable to pay compensation and the relevant passages are extracted hereunder:

> *"6.The issue to be decided in the appeal is whether the policy of insurance taken by the owner of the vehicle as per Section 147 of the Motor Vehicles Act covers the bodily*

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injury or death of pillion rider traveling in the offending two-wheeler.

7.The issue whether the rider and pillion rider in a two-wheeler and occupants of a four-wheeler are entitled to claim compensation from the Insurance Company for the bodily injury or death when the policy was issued under Section 147 of the Motor Vehicles Act is no longer res-integra. 8.From the judgments relied on by the learned counsel appearing for the appellant as well as the 1 st respondent, the following principles emerge:

"(i).The policy which the owner of the vehicle takes under Section 147 of the Motor Vehicles Act is 'Statutory Policy', also known as 'the Act Policy'.

(ii)It covers the liability of the owner in respect of third party only. After amendment of the Section in the year 1994 by Act 54 of 1994 which came into force with effect from 14.11.1994, it covers owner of the goods or his authorized representative carried in the goods vehicle.

(iii).The owner of the vehicle can pay extra premium to increase the liability of the insurer in respect of third party.

(iv).The rider, pillion rider of a two-wheeler and occupant of a four-wheeler are not third parties and they are not covered by Act Policy issued by the Insurance Company.

(v).The owner of the vehicle can pay extra premium to cover personal accident claim, the rider, pillion rider and occupant

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of a four-wheeler. The policy issued by the Insurance Company after receiving extra premium to cover rider and pillion rider of a two wheeler and occupants of a four-wheeler is called 'Comprehensive Policy'.

(vi).Only when the owner of the vehicle takes Comprehensive Policy by paying extra premium, the pillion rider in a two-wheeler can claim compensation from the Insurance Company. If the policy is Act only Policy, the rider, the pillion rider in a two-wheeler and occupant of a four-wheeler are not third parties as per Section 147 of the Motor Vehicles Act and they are not entitled to claim compensation from the Insurance Company."

9. I have extracted the portions of the judgments relied on by both the learned counsel appearing for the appellant as well as the 1st respondent as they have elaborately made submissions on the issue to be decided in this appeal.

10.It is seen that the 1st respondent was traveling as a pillion rider in the Motor bike, driven by the 2nd respondent. According to the 1 st respondent due to rash and negligent driving by the 2nd respondent, the Motor bike skidded and the 1st respondent fell down and sustained with multiple injuries.

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11.The contention of the appellant is that the policy in question is only an Act policy and it covers risk and liability in respect of the third parties only and it does not cover the rider and pillion rider of the Motor bike. The 1st respondent has not disputed that the policy issued by the appellant is only an Act Policy. It is not the case of the 1st respondent that policy issued by the appellant is comprehensive policy covering both rider and pillion rider of the Motor bike. The Tribunal fastened the liability of the appellant on the ground that the 1st respondent was a third party. Such finding is erroneous. It is well settled that in an Act Policy the rider and the pillion rider of the two wheeler are not covered and Insurance Company is not liable to pay compensation for the bodily injuries or the death. Whether, the pillion rider is covered under the Act Policy or not was considered by the Hon'ble Apex Court in the Judgment reported in 2006 (4) SCC 404 [United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and others], wherein the Hon'ble Apex Court has held that the pillion rider is not covered in the Act Policy and the Insurance Company is not liable to pay compensation to the pillion rider.

12.In the present case, the Insurance Policy in question is only 'Act Policy' and st respondent was a pillion rider. In view of principles that emerged in the judgments referred to above, the 1st respondent is not a third party and he is only a

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gratuitous passenger. The contention of the learned counsel for the 1st respondent that the 1st respondent is a pillion rider and the Tribunal rightly directed the appellant to pay the compensation is without merits. The Tribunal erroneously held that the 1 st respondent, pillion rider is a third party and appellant is liable to pay compensation. In the judgment of the Hon'ble Apex Court reported in 2006 (4) SCC 404 extracted above, it has been held that pillion rider is a gratuitous passenger in case of Act Policy. In the judgment of the Hon'ble Apex Court reported in 2007 (5) SCC 428 [Oriental Insurance Co. Ltd., vs. Meena Variyal], the Hon'ble Apex Court referring to Asha Rani's case, [New India Assurance Co. Ltd., Vs. Asha rani], held in paragraph No.18 as follows: "In other words, this Court clearly held that the apparently wide words 'any person' are qualified by setting in which they occur and that 'any person' is to be understood as a third party". As per the judgments referred to above, in an Act Policy, the pillion rider in a two-wheeler is a gratuitous passenger and appellant is not liable to pay compensation to the 1st respondent. In view of the fact that the appellant is not liable to pay any compensation, the question of pay and recovery does not arise."

11. In the case on hand, though the Tribunal, after referring to the stand of the Insurer that since the policy purchased by the first

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respondent is only a limited liability policy, the same does not qualify and cover the pillion rider, has not dealt with that defence, but on the other hand, by relying the decision of this Court in ***Divisional Manager, National Insurance Co., Ltd., Vs. Sundaramoorthy and others*** reported in ***2019(1) TN MAC 751***, has concluded and directed the second respondent to pay the entire compensation to the claimants and then to recovery the same from the first respondent.

12. It is evident from Ex.R.1 – Policy that the first respondent has paid premium of Rs.50/- towards compulsory PA for Owner Driver. But admittedly no premium was paid to cover the pillion rider. Considering the above and in view of the legal position above referred, this Court has no hesitation to hold that the appellant – Insurer is not liable to pay compensation to the claimants and the question of invoking the doctrine of pay and recovery does not arise at all. Consequently, this Court concludes that the award dated 10.11.2021 is liable to be set aside and on considering the other facts and circumstances, the parties are to be directed to bear their own costs.

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13. In the result, the Civil Miscellaneous Appeal is allowed and the impugned award dated 10.11.2021 is set aside. The appellant-Insurer is permitted to withdraw the amount if already deposited, by filing necessary application before the Tribunal. The parties are directed to bear their own costs.

23.11.2022

Index : Yes : No
Internet : Yes : No
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To

1.The Motor Accident Claims Tribunal /
The Special District Court to deal with the Motor Accident Cases,
Madurai.

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

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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.601 of 2022

23.11.2022