IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2023

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2409 of 2007

The Oriental Insurance Co. Ltd.,
Branch Office, II Floor,
1, Katpadi Road, Vellore,
North Arcot District. ... Appellant

Vs

1. Ramakrishnan

2. Mustaq Ahmed
(R2- Disd vide order dated 28.11.2022) ... Respondents

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and decree dated 23.07.2001 in MCOP No.762 of 1992 passed by the Motor Accidents Claims Tribunal/Subordinate Court, Dharmapuri.

For appellant : Mr.J.Vijayagraghavan

For respondent : No appearance – R1

JUDGMENT

This appeal has been filed by the appellant/insurance company against the Judgment and decree dated 23.07.2001 in MCOP No.762 of

1992 passed by the Motor Accidents Claims Tribunal/Subordinate Court, Dharmapuri.

2. It is the case of the claimant that on 21.10.1990 p.m. When the claimant and 11 others were travelling in the lorry which was owned by the second respondent and insured with the appellant herein, driven by its driver, hit against the tamarind tree, due to which, the claimant sustained grievous injuries. Thereafter, the claimant has filed a claim petition claiming compensation before the Tribunal for the injuries sustained.

3. In order to prove the claim, the claimant has examined himself as P.W.1 and marked two documents viz., Ex.P1 and Ex.P2. On the side of the insurance company, two witnesses were examined and one document was adduced. After analyzing the evidences, the Tribunal has awarded a sum of Rs. 17,500/- as compensation.

4. Questioning the liability fixed, the appellant/Insurance Company has come forward with this appeal before this Court.

5. The learned counsel for the appellant/Insurance company submitted that the Tribunal has failed to appreciate that the injured was a

gratuitous passenger in the goods vehicle and that the appellant, as insurer was not liable to cover such risks of gratuitous passengers under MV Act. The second respondent is having Act policy and the injured are the gratuitous passenger of the lorry. As such, there is no coverage for the gratuitous passengers/injured persons/first respondent of the lorry. Without considering the said fact, the Tribunal has awarded the compensation in favour of the first respondent, which is liable to be set aside.

6. In this context, the learned counsel relied upon the decision of this Court in the case of New India Assurance Co. Ltd., Vs.S.Krishnasamy reported ***in 2015 (1) TNMAC 19 (DB).***

7.Heard the learned counsel for the appellant and perused the materials available on record. Though notice has been served on the first respondent, no one appeared on his behalf.

8. The facts of the case are not in dispute. Admittedly, the second respondent is the owner of the lorry, which was insured with the appellant. The first respondent along with 11 others were travelling in the said lorry, the driver who was driven the lorry, in a rash and negligent

manner, dashed against the tamarind tree, due to which, the said vehicle was capsized. It is not disputed that the first respondent sustained injuries as stated in the claim petition.

9. The issue arises in these appeals is whether the policy taken by the second respondent is an "Act policy" or "comprehensive policy' and the first respondent is entitled to get compensation from the appellant.

10. On perusal of the counter affidavit filed by the appellant Insurance company before the Tribunal, which makes it clear that the policy taken by the second respondent is an Act Policy and the Tribunal also arrived at a conclusion that the policy is an Act Policy. If it is so, whether the occupant is entitled for claiming compensation in the category of third party. The said issue has been elaborately considered by the Hon'ble Division Bench of this Court as stated supra. The relevant paragraphs are extracted hereunder:

> *"6.Per contra, learned counsel appearing for the respondents 1 to 5 submitted that at the time of accident, the deceased Palanisamy was travelling as an occupant in the private car and the Car never used for hire of any reward and as per the Registration Certificate of the car, one driver plus four occupants can travel and hence, there*

is no prohibition for travelling as a passenger to be the occupant of the Car, apart from the driver and therefore, the deceased cannot be termed as a gratuitous passenger, nor fare paying passenger and the deceased is coming under the category of 'third party' and therefore, there is no need to pay additional premium to cover the risk or death of persons in the private car and the Insurance company ought to have satisfied the entire award amount to the dependents of the family. He further contended that even though, the first respondent is having Act policy, the Tribunal, after analyzing the materials available on record and also the rulings cited on either side, has rightly awarded the quantum of compensation and hence, there is no need to interfere with the same and therefore, the appeal has to be dismissed.

....

18.In view of the rulings cited above, we are of the considered view that since, the policy is only an Act policy issued by the appellant Insurance company to the insurer and the deceased Palanisamy was only an occupant of the private car, cannot be considered as 'third party' of the vehicle and the policy is covered risks to the third party alone. Hence, the deceased was only the occupant of the private car and the said policy will not cover the risk of the deceased. The doctrine of pay and recovery cannot be applied to the facts of the case, since the appellant Insurance company is not liable to pay the compensation.

Hence, pay amount to the claimants and then recover the same from the owner of the vehicle involved in the accident cannot be ordered and in view of the above, the rulings cited on the side of the respondents 1 to 5/claimants are not applicable to the facts of the present case.

11. In view of the above discussion, this Court is of the considered view that since the policy is only an Act Policy issued by the appellant-Insurance company to the insurer second respondent, who is the owner of the car, cannot be considered as third party and the injured person/first respondent is only an occupant of the private car, cannot be considered as third party of the vehicle and the policy is covered risks to the third party alone. Hence, the policy will not cover the risk of the first respondent and the compensation awarded by the Tribunal cannot be applied to the facts of the case, since the appellant is not liable to pay the compensation to the injured person. The accident had happened only due to rash and negligent act of the driver of the second respondent.

12. In the result, the appeal is allowed and the award passed by the Tribunal is set aside. No costs. Consequently, connected miscellaneous petition is also closed.

19.10.2023

Index : Yes/no
Internet : Yes/no

To

The Motor Accidents Claims Tribunal/Subordinate Court,
Dharmapuri.

M.DHANDAPANI.,J.

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