IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.3358 to 3360 of 2008 and 2508 of 2009
And
M.P.Nos.1 to 1 of 2008 and 1 of 2009

The New India Assurance Company Ltd.,
No.12, New Hospital Road,
Gobichettipalayam. ... Appellant in all the C.M.As.

Vs.

1.Asma (Minor)
rep. by father and natural guardian Jinna
2.K.Murugesh ... Respondents in C.M.A.3358/2008

1.Asik (Minor)
rep. by father and natural guardian Jinna
2.K.Murugesh ... Respondents in C.M.A.3359/2008

1.Sulthan Beebi
2.K.Murugesh ... Respondents in C.M.A.3360/2008

1.Jakara
2.K.Murugesh ... Respondents in C.M.A.2508/2009

Prayer in C.M.A.No.3358 of 2008:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the common award and decree dated 16.03.2007 passed in M.C.O.P.No.821 of 2004 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.IV, Coimbatore at Tiruppur.

Prayer in C.M.A.No.3359 of 2008:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the common award and decree dated 16.03.2007 passed in M.C.O.P.No.822 of 2004 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.IV, Coimbatore at Tiruppur.

Prayer in C.M.A.No.3360 of 2008:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 13.11.2007 passed in M.C.O.P.No.630 of 2004 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.IV, Coimbatore at Tiruppur.

Prayer in C.M.A.No.2508 of 2009:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.04.2009 passed in M.C.O.P.No.266 of 2007 on the file of the Motor Accidents Claims Tribunal/ Additional District Court/ Fast Track Court No.IV, Coimbatore at Tiruppur.

For Appellant : Mr.R.Sivakumar
in all the C.M.As.

For Respondents : Mr.Ma.P.Thangavel for R1
R2 – Notice returned as 'not claimed'
in C.M.A.Nos.3358 to 3360 of 2008

Mr.Ma.P.Thangavel for R1
R2 – Not Ready Notice
in C.M.A.No.2508 of 2009

COMMON JUDGMENT

The second respondent Insurance Company before the Motor Accidents Claims Tribunal, is the appellant herein. These appeals have been filed against the judgment and decree dated 16.03.2007, 16.03.2007, 13.11.2007 and 24.04.2009 respectively, passed in M.C.O.P.Nos.821, 822, 630 of 2004 and 266 of 2007 respectively, on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.IV, Coimbatore at Tiruppur.

2.The brief facts of the case is that on 23.05.2004 at about 02.00 hours the injured claimants/ first respondent in all the appeals were travelling in a van bearing Registration No.TN-02-A-5661 from South to North in Tirupur to Dhrapuram Road, near Karuparayan Koil, Pon Nagar, Tirupur. At that time the driver of the van drove the van in a rash and negligent manner and dashed against a tree, due to which, all the injured sustained injuries.

3.Thereafter, after treatment, the injured/ claimants filed claim petitions before the Motor Accidents Claims Tribunal, Fast Track Court No.IV, Coimbatore at Tiruppur, claiming compensation of Rs.5 Lakhs, Rs.5Lakhs, Rs.5 Lakhs and Rs.12 Lakhs respectively.

4.After adjudication, the Motor Accidents Claims Tribunal, awarded the following compensation to the claimants/ respective first respondent and aggrieved by the same, the appellant Insurance Company has filed these appeals.

(i)In M.C.O.P.No.821/2004 the Tribunal awarded a sum of Rs.90,050/- as compensation to the claimant along with interest at the rate of 7.5% p.a. from the date of petition till the date of payment and costs and directed the appellant Insurance Corporation to pay the compensation amount.

(ii)In M.C.O.P.No.822/2004 the Tribunal awarded a sum of Rs.1,10,750/- as compensation to the claimant along with interest at the rate of 7.5% p.a. from the date of petition till the date of payment and costs and directed the appellant Insurance Corporation to pay the compensation amount.

(iii)In M.C.O.P.No.630/2004 the Tribunal awarded a sum of Rs.56,000/- as compensation to the claimant along with interest at the rate of 7.5% p.a. from the date of petition till the date of payment and proportionate costs and directed the appellant Insurance Corporation to pay the compensation amount.

(iv)In M.C.O.P.No.266/2007 the Tribunal awarded a sum of Rs.9,05,611/- as compensation to the claimant along with interest at the rate of 7.5% p.a. from the date of petition i.e., 30.10.2006 till the date of payment and proportionate costs and directed the appellant Insurance Corporation to pay the compensation amount.

5.The learned counsel appearing for the appellant Insurance Company submitted that the appellant has filed these appeals questioning the liability. Admittedly, the injured claimants are the occupants of the private van and they were travelling as un-authorized passengers. The policy taken by the owner of the vehicle is an Act policy and as per the policy, the driver of the vehicle alone is entitled to claim compensation and occupants are not entitled to claim compensation as against the Insurance Company. The learned counsel further submitted that there was no extra premium paid for the occupants of the van.

6.The learned counsel appearing for the appellant Insurance Company further submitted that the policy is an Act policy issued by the appellant Insurance Company to the insurer. The claimants/ respective first respondent who were only occupants of the vehicle, cannot be considered as third party of the vehicle. Hence, the policy will not cover the risk of the injured claimants. The learned counsel further submitted that the issue involved in these appeals is no longer *res integra* and the same has been settled by the Hon'ble Division Bench of this Court in its decision reported in ***2015 (1) TNMAC 19 (DB) [New India Assurance Company Limited Vs. S.Krishnasamy and others]***, as per which, 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, this Court may set aside the judgment and decree impugned in these appeals.

7.Per contra, the learned counsel appearing for the claimants/ respective first respondent submitted that in the decision of this Court reported in 2011 (1) TNMAC 441 (SC) [United India Insurance Co. Ltd., Vs. K.M.Poonam and others] it was held that if the number of persons were more, they should be treated as third parties and the concept of pay and recover can be adopted in the case, directing the insurer to pay at the first instance with liberty to recover the same from the owner of the vehicle. In the present case also, the Insurance Company can very well pay the compensation to the claimants and recover the same from the owner of the vehicle.

8.Heard the arguments advanced by the learned counsel appearing for the appellant Insurance Company as well as the learned counsel appearing for the first respondent claimants and perused the materials available on record.

9.Admittedly, on 23.05.2004 at about 02.00 hours the injured claimants/ first respondent in all the appeals were travelling in a van bearing Registration No.TN-02-A-5661 from South to North in Tirupur to Dhrapuram Road, near Karuparayan Koil, Pon Nagar, Tirupur. At that time the driver of the van drove the van in a rash and negligent manner and dashed against a tree, due to which, all the claimants sustained injuries.

10.Admittedly, the injured claimants are the occupants of the private van and they were travelling as un-authorized passengers. The policy taken by the owner of the vehicle is an Act policy and as per the policy, the driver of the vehicle alone is entitled to claim compensation and occupants are not entitled to claim compensation as against the Insurance Company. Further, no extra premium was paid for the occupants of the van. Hence, the policy will not cover the risk of the injured claimants.

11.The issue involved in these appeals has already been settled by the Hon'ble Division Bench of this Court in its decision reported in ***2015 (1) TNMAC 19 (DB) [New India Assurance Company Limited Vs. S.Krishnasamy and others],*** the relevant portion of which, is 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."*

12.The decision cited supra was followed by the learned Single Judge of this Court in the case of ***United India Insurance Company Limited Vs. A.Palanivelrajan and two others [C.M.A.Nos.627 and 628 of 2022 dated 28.06.2023]***, the relevant portion of which reads as follows:

"13.It is not disputed that the accident occurred on 09.10.2015, while the claimant, his deceased wife and one Jayalakshmi were travelling in the Omni car. It is seen from the evidence that the claimant as well as the deceased were occupants of the private Omni car. The Insurance Policy is an Act only Policy and does not cover the occupants of the car. The occupants of private car would be covered only under a Package Policy, where additional premium is paid for covering them. In the present case the Insurance policy was marked as Ex.R1 and it is seen that the policy is a private car liability policy. In the schedule to

*the policy it is seen that the premium was paid covering the third party claims and legal liability to the driver. No additional premium was paid covering the two occupants of the car. As rightly contended by the learned counsel for the appellant when no additional premium was paid covering the risk to the occupants of the car, the Insurance company could not be mulcted with the liability. In **New India Assurance Company Limited Vs. S.Krishnaswamy**, cited supra, after discussing a number of Judgments on the said issue it was held in paragraph Nos.18 and 19 as follows:*

> *"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 40 rulings cited on the side of the respondents 1 to 5/claimants are not applicable to the facts of the present case.*
>
> *19.Hence, we are of the considered view that since the Act policy did not cover the risk, the Insurance Company is not liable to pay any compensation to the claimants/dependents of the deceased and the owner of the vehicle alone is liable to pay damages to the claimants, as the accident occurred due to rash and negligent act of the driver of the vehicle."*

14.In view of the above said Judgment of this Court, on the facts of the case and also the terms of the policy, which was marked as Ex.R1, I am of the view that the third respondent Insurance Company is not liable to

> *pay the compensation. The submission of the learned counsel for the respondent praying for a direction to the third respondent/ Insurance Company to pay and recover from the owner cannot be entertained in view of the aforesaid Judgment of the Hon'ble Division Bench.*

13.Perusal of the decisions cited supra makes it clear that the occupant of the private vehicle, cannot be considered as 'third party' of the vehicle and the policy cover the risks to the third party alone. In the present case, the claimants/ respective first respondent who were only occupants of the vehicle, cannot be considered as third party of the vehicle. Hence, the policy will not cover the risk of the injured claimants. Therefore, 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.

14.Applying the ratio laid down in the decisions cited supra, these civil miscellaneous appeals are allowed. The judgment and decree dated 16.03.2007, 16.03.2007, 13.11.2007 and 24.04.2009 respectively, passed in M.C.O.P.Nos.821, 822, 630 of 2004 and 266 of

2007 respectively, by the Motor Accidents Claims Tribunal, Fast Track Court No.IV, Coimbatore at Tiruppur insofar as liability is concerned are set aside. Liberty is granted to the injured claimants/ respective first respondent to recover the claim amount from the owner of the vehicle/ second respondent in the manner known to law. The appellant Insurance Company is permitted to withdraw the amount, if any, already deposited by them.

15.The civil miscellaneous appeals are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

18.10.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
Fast Track Court No.IV,
Coimbatore at Tiruppur.

M.DHANDAPANI,J.
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C.M.A.Nos.3358 to 3360 of 2008
and 2508 of 2009
And
M.P.Nos.1 to 1 of 2008
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