IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1810 of 2011
and
M.P.No.1 of 2011

M/s.Bajaj Allianz General Insurance Co. Ltd.,
Functioning at
D.No.11, Office No.6-A), People's Park,
3rd Floor, Government Arts College Road,
Coimbatore – 641 018. ... Appellant / 2nd Respondent

Vs.

1.Govindaraj ... 1st Respondent / Petitioner

2.M.Sampathkumar ... 2nd Respondent / 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.64 of 2008 dated 28.12.2010 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates

For Respondents : Mr.S.Sankar [R1]
Ex-parte [R2]

*****

JUDGEMENT

Challenging the award passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal in M.C.O.P.No.64 of 2008 dated 28.12.2010, the appellant has preferred the above appeal.

2. The first respondent/claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') stating that on 07.03.2007 at about 00.30 hrs at Alanganatham Pirivu Road, near Bridge, he was riding as a pillion rider with one Govindaraj, S/o.Kaliamoorthi in the motorcycle bearing Reg.No.TN-33-A-5893, owned by the second respondent, driven by the said Govindaraj in a rash and negligent manner and he hit against the lorry, due to which, the first respondent sustained grievous injuries all over his body. Thereafter, he filed a claim petition claiming a sum of Rs.7,00,000/- for the injuries sustained by him.

3. The second respondent herein remained exparte before the Tribunal. Before the Tribunal, the claimant examined four witnesses viz., P.W.1 to P.W.4 and marked 13 documents viz., Ex.P.1 to Ex.P.13. On the side of the respondents, they have examined one witness viz., R.W.1 and marked one document viz., Ex.R.1. After adjudication, the Tribunal had partly allowed the

petition and awarded a sum of Rs.4,96,444/- as compensation under various heads. Aggrieved by the said order, the Insurance Company has preferred the present appeal.

4. The learned counsel appearing for the appellant submitted that the rider of the motorcycle filed a claim petition under Section 163(A) of the Act. He also submitted that when a person files a claim petition under Section 163(A) of the Act, he is not entitled to raise claim against the owner, since he is the tort-feasor and for his own wrong, he is not entitled to claim compensation. In the present case, it is alleged that the negligence is on the part of the lorry and unless the claimant impleads the owner of the lorry and Insurance Company, his claim under Section 166 of the Act as against the appellant is not sustainable. In support of his contention, he relied upon the decision of the Apex Court reported in ***2012 ACJ 1305.***

5. Per contra, the learned counsel appearing for the first respondent submitted that the first respondent/claimant is the pillion rider and he travelled along with the rider and due to the rash and negligent driving of the rider, he dashed against the lorry and sustained injuries. However, the lorry was not identified either by the law enforcing agency or by the rider and the pillion

rider, thereby the owner of the lorry was not impleaded. However, even assuming that due to the negligence of the motorcycle, the accident had happened, the said aspect was elaborately considered by the Tribunal and thereafter, the Tribunal had passed the award, which cannot be interfered with. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the first respondent and perused the materials available on record.

7. The rider of the motorcycle is one Govindaraj, S/o.Kaliamoorthi and the pillion rider is one Govindaraj, S/o.Venugopal. Admittedly, the rider of the motorcycle had driven the same and hit against the unknown lorry. Both the rider and the pillion rider filed claim petitions before the Tribunal and aggrieved by the award of the Tribunal, the appellant filed two appeals before this Court viz., the present appeal and C.M.A.No.1811 of 2011. This Court had allowed the appeal in C.M.A.No.1811 of 2011 in respect of the claim petition filed by the rider of the motorcycle, by fixing liability against the rider of the motorcycle applying the ratio laid down by the Apex Court in the case of ***Ramkhiladi and Ors Vs. The United India Insurance Company and Ors.***

However, in the present case, the first respondent is not the rider, but he is a pillion rider and due to the rash and negligent driving of the rider of the motorcycle, his claim was entertained u/s 166 of the Act as a third party claim and the Tribunal passed an award.

8. So long as the claimant is not the rider of the vehicle, which is also admitted by the appellant, merely because the rider of the vehicle had admitted his fault, the same cannot be put against the claimant to hold that the petition u/s 166 of the MV Act is not maintainable, more so, when the law enforcing agency is not able to identify the lorry and, therefore, the non-impleadment of the owner of the lorry and the insurer of the lorry cannot be a ground to defeat the case of the claimant.

9. Further, it is pertinent to note that the decision relied upon by the learned counsel appearing for the appellant is not applicable to the present case on hand as in the said case, the claimant had pleaded that the negligence was on the part of the third party, however, in the present case, the first respondent/pillion rider specifically pleaded that due to the rash and negligent driving of the rider of the motorcycle as well as the lorry, the accident had happened, which resulted in the entertainment of the claim. It is not the case

of the appellant that the vehicle is not covered by a contract of insurance in which the pillion rider is not entitled for any compensation. It is the specific case of the claimant before the Tribunal that the vehicle is covered by a comprehensive policy and, therefore, the pillion rider is entitled to claim compensation. The claim of the claimant that the vehicle is covered by a comprehensive policy is not disputed by the respondents by placing any material to the contra. In fact, the policy of insurance, which is marked as Ex.P-8 by the claimant and the terms and conditions of the policy along with the copy of the policy, which is marked by the appellant as Ex.R-1 by the insurance company clearly reveals that the policy, which is the subject matter of the present case is a comprehensive policy and in such a situation, the insurance company is liable to compensate the claimant.

10. In this regard, useful reference can be had to the decision of the Apex Court in ***National Insurance Co. Ltd. – Vs – Balakrishnan (2013 (1) SCC 731)*** wherein, while adverting to the decision of the Delhi High Court in ***Yashpal Luthra – Vs – United India Insurance Co. Ltd. (2011 ACJ 1415 (Del))***, the Apex Court held as under :-

"25. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:

> *"27. In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."*

26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may *hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."*

(Emphasis Supplied)

11. From the above, it is evident that advisory had been given by the Insurance Regulatory Development Authority to all the insurance companies that where comprehensive policy/package policy is taken, it would cover the occupants of the private vehicle as well. Further, the Supreme Court had gone on to hold that in respect of "*Act Policy"* admittedly it cannot cover third party risk of an occupant in a car, but insofar as a comprehensive policy/package policy, the same would cover the occupant in a car. Therefore, this decision only furthers the case to the extent that insofar as Comprehensive Policy/Package Policy, the occupant of the private vehicle would stand covered

for the purpose of claiming compensation, as premium has been paid for the said coverage under the terms of contract entered into between the insurer and the insured but no ratio has been laid down that the term "*any person*" appearing in Section 147 (1)(b)(i) would fall within the contours of the definition of "*third party*" u/s 145 (g).

12. In the case on hand, the policy of insurance being a comprehensive policy, the pillion rider would also stand covered under the policy and, rightly appreciating the above, the Tribunal has granted compensation to the claimant, which in no way is perverse, arbitrary or unreasonable and the same cannot be interfered with. Hence, the appeal is liable to be dismissed.

13. Accordingly, the civil miscellaneous appeal is dismissed and the award passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal in M.C.O.P.No.64 of 2008 dated 28.12.2010 is confirmed. Further, the first respondent/claimant is permitted to withdraw the entire award amount. No costs. Consequently, connected M.P. is closed.

05.10.2023

(½)

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

Neutral Citation Case : Yes / No
sp/GLN

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court,
Namakkal.

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

M.DHANDAPANI, J.,

sp/GLN

C.M.A.No.1810 of 2011

05.10.2023
(½)