IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1904 of 2011
and M.P.No.1 of 2011

United India Insurance
Company Limited.,
No.2 Dr.Sankaran Road,
Namakkal Taluk,
Namakkal District ... Appellant/Respondent-II

Vs

1.Periyasamy ... Respondent/Appellant

2.Siribalan ... Respondent/Respondent-I

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.11.2010 made in MCOP No.92 of 2005 on the file of the Motor Accident Claims Tribunal Chief Judicial Magistrate Court at Namakkal.

For Appellants ... Ms.I.Malar

For Respondents ... Mr.Ma.P.Thangavel [R1]
... [R2]- ex-parte

JUDGEMENT

Challenging the impugned award dated 29.11.2010 passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal in MCOP No.92 of 2005, the Appellant-Insurance Company has filed the present appeal.

2. On 08.04.2005, at about 11 p.m., when the claimant was riding as a pillion rider along with one Varadraj in the motorcycle bearing Reg.No. TN 28/H-0512, the vehicle met with an accident due to the rash and negligent driving by the rider of the vehicle by falling in a pit in which the claimant sustained injuries for which he took medical treatment as impatient in the hospital Therefore, the Appellant has filed the present petition against the respondents claiming compensation before the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Namakkal in MCOP No.92 of 2005 claiming compensation under various heads.

3. Before the Tribunal, the claimant examined himself as P.W.1, examined the doctor as P.W.2 and marked Ex.P-1 to Ex.P-14. On the side of the respondents, the Assistant Manager was examined as R.W.1 and marked the policy document viz., Ex.R1. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.3,97,871/- under various heads. Aggrieved by the said award, the Appellant-Insurance Company has filed the present Appeal.

4. Learned counsel for the Appellant-Insurance Company submitted that the policy which covers the vehicle in question is an Act only policy and the claimant being the pillion rider in the said vehicle is not covered within the ambit of third party as no specific additional premium has been paid by the owner of the vehicle and therefore fastening liability on the appellant to pay the compensation is wholly erroneous. It is further submitted that the compensation awarded under various heads are also excessive and accordingly prays for intereference.

5. Learned counsel for the first respondent/Claimant submitted that the

Motor Vehicles Act being a benevolent legislation though the policy of insurance is only an Act Only Policy however, the claimant would be deemed to be a third party for the pupose of claiming compensation which aspect has been rightly appreciated by the Tribunal and compensation has been awarded which does not require any intereference.

6. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing for the appellant-Insurance Company as well as the first respondent/claimant and perused the materials available on record.

7. The factum of the accident is not in dispute and so also the injuries sustained by the claimant. However the only issue that requires consideration is that the policy which does not indemnify the pillion rider as no additional premium has been paid with regard to the persons who are carried in the said vehicle and therefore the Insurance Company is not liable to pay the compensation.

8. The issue raised in this Writ Petition is no longer *res integra* as the

similar issue was already considered by the Supreme Court in case of ***Amrit Lal Sood – Vs – Kausalya Devi Thapar*** reported in ***(1998 (3) SCC 744,*** wherein, the Supreme Court has held as under:-

> *"59. In the above backdrop, it would be worthwhile to refer to the decision in Amrit Lal Sood case (supra), which had formed the basis for arriving at a finding by the Division Bench in Chandrasekaran case (supra) that the term "any person" appearing in Section 147 (i)(b)(ii) of Act, 1988, would fall within the periphery of "third party" as defined u/s 145 (g) of Act, 1988. The relevant portion of the order is quoted hereunder :-*
>
> > *"4. The liability of the insurer in this case depends on the terms of the contract between the insured and the insurer as evident from the policy. Section 94 of the Motor Vehicles Act, 1939 compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of Chapter VIII of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The section does not however require a policy to cover the risk to passengers who are not carried for hire or reward.* ***<u>The statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a statutory policy, the terms of the policy have to be considered to determine the liability of the insurer</u>.***
> >
> > *5.* ***In the present case, the policy is admittedly a 'Comprehensive Policy'****. Comprehensive insurance' has*

been defined in Black's Law Dictionary 5th edition as 'All risk insurance' which in turn is defined as follows:-
"Type of insurance policy which ordinarily covers every loss that may happen, except by fraudulent acts of the insured. Miller v. Boston Ins. Co. 218 A. 2d 275. Type of policy which protects against all risks and perils except those specifically enumerated."
6. The relevant clauses in the policy before us are found in 'SECTION-II LIABILITY TO THIRD PARTIES'. They are:-

> *"1. The Company will indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of*
>
> *(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.*
>
> *(b) damage to property other than property belonging to the Insured or held in trust by or in the custody or control of the insured.*
>
> *2. The Company will pay all costs and expenses incurred with its written consent.*
>
> *3. In terms of and subject to the limitations of the indemnity which is granted by this Section to the insured the Company will indemnify any Driver who is driving the Motor Car on the Insured order or with his permission provided that such Driver*
>
> *(a) is not entitled indemnity under any other Policy*
>
> *(b) shall as though he were the Insured observe fulfil and be subject to the terms exceptions conditions and limitations of this policy in so far as they can apply."*

(Emphasis Supplied)

9. Insofar as the vehicle is covered under Comprehensive policy it is the duty of the insured to compensate the claimants irrespective of the fact that whether the claimant is a rider or a pillion rider however where the policy is an Act only policy and no additional premium has been paid towards the pillion rider, the insurance company cannot be fastened with any liability to compensate the pillior rider as the Insurance Company would be governed by the terms of the policy entered into between the insurer and the insured. In the case on hand, there being no dispute about the fact that the vehicle in question is covered by an Act only Policy and no addtitional premium has been paid for covering the pillion rider, the Insurance Company cannot be fastened with any liability to pay the compensation. Therefore, the order of the Tribunal directing the Insurance Company to pay the compensation quantified is grossly erroneous and the same deserves to be set aside.

10. Accordingly, the Appeal is allowed and while the Insurance Company is absolved of its liability to pay the compensation in turn this Court fastens the liability on the owner of the vehicle/Second Respondent to pay the

compensation quantified by the Tribunal. The Claimant is at liberty to recover the amount of compensation awarded by the Tribunal from the Second Respondent/owner of the vehicle in the manner known to law. There shall be no order as to costs in this Appeal. Consequently, the connected Miscellaneous Petition stands closed.

18.10.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS

To

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

2.The Section Officer,
V.R. Section,

<u>M.DHANDAPANI, J</u>

NHS

C.M.A.No.1904 of 2011

18.10.2023