IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM :

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

C.M.A.No.2110 of 2013

1. Pappathi
2. Pouna
3. Sathya
4. Minor Muthulakshmi
5. Minor Gogulakrishnan

Minor 4 & 5 are Rep. by the next friend
and mother, 1st appellant Pappathi ...Appellants

Vs.

1. Murugavel
2. M/s. The New India Assurance Co. Ltd.,
No.17, Fort Main Road, Shevapet,
Salem – 2. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order made in M.C.O.P.No.1324 of 2008 on the file of the Motor Accident Claims Tribunal Cum Additional District Judge and Special Judge for EC Act Cases, Salem, dated 12.10.2012.

For Appellants : Mr.C.Kulanthaivel

For Respondents : No Appearance. for R1
Mr.J.Chandran, for R2

JUDGEMENT

The present appeal has been filed to set aside the Judgement and Decree dated 12.10.2012 made in M.C.O.P.No.1324 of 2008 on the file of the Motor Accident Claims Tribunal Cum Additional District Judge and Special Judge for EC Act cases, Salem.

2. The case of the appellants is that, on 21.05.2008, when the deceased Kandasamy was travelling as a cleaner in the tempo bearing Regn.No.TN-23-B-0303, the driver of the tempo drove the vehicle in a rash and negligent manner, which resulted in the tempo turning upside down, in which the deceased sustained fatal injuries and died on spot. Thereby, the appellants/dependants of the deceased filed a claim petition claiming a compensation of Rs.10,00,000/- . After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.3,27,000/-. Aggrieved by the said order, the claimants have preferred this Appeal seeking enhancement of compensation.

3. Learned counsel for the appellants submitted that, though the

tribunal held that the above said accident happened solely due to the rash and negligent driving of the driver of the 1st respondent vehicle, due to which, the deceased lost his life, however, in view of the fact that the above said tempo was covered only under the Act only policy, the Tribunal while awarding a compensation of Rs.3,27,00/- in favour of the appellants/claimants, fixed the liability of the payment of compensation on the owner of the vehicle/the 1st respondent, while absolving the insurer of the vehicle/the 2nd respondent, which is not sustainable, since, the deceased travelled as the cleaner of the vehicle only at the instance of the owner of the vehicle and he would be covered under the ambit of third party and even the Act only policy in this regard would cover the liability cast on the owner of the vehicle/1st respondent, which has to be satisfied by the insurer. Further, though the appellants/claimants have specifically stated that the deceased was aged about 52 years at the time of accident and was employed as cleaner-cum-load man and he earned a sum of Rs.5,000/- per month, however, without considering any of the above said facts, the tribunal had taken the monthly income of the deceased as Rs.3,000/- alone which is very meagre and the compensation awarded under other heads are also on lower side and the same has to necessarily be enhanced. Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the 2nd respondent submitted that, the 1st respondent/owner of the vehicle had taken a third party liability policy, viz., an Act Only Policy, which does not cover the liability towards gratuitous passenger and it covers only the liability towards the driver of vehicle and the deceased being a cleaner cannot claim compensation from the 2nd respondent insurance company, since no separate premium has been paid for the cleaner. Further, any person beyond the persons prescribed in the policy would not be covered under the terms of the contract. After considering the above said aspect, the Tribunal has rightly fastened the liability on the 1st respondent, which does not require any modification.

5. Heard learned counsel appearing for the appellants as well as the 2nd respondent and perused the material documents placed on record.

6. The major issue that arises for consideration in the present appeal is whether the deceased being a cleaner is eligible to claim compensation at the hands of the insurance company, though the vehicle in question is insured only under an Act Only Policy.

7. The issue which is raised in the present appeal is no longer *res integra,* as the similar issue has already been considered by the Apex Court in the case of ***Oriental Insurance Co. Ltd. - Vs - Sudhakaran K.V. & Ors. (2008 (7) SCC 428)***, wherein, the Apex Court held thus :-

> *"14. The provisions of the Act and, in particular, Section 147 of the Act were enacted for the purpose of enforcing the principles of social justice. It, however, must be kept confined to a third party risk. A contract of insurance which is not statutory in nature should be construed like any other contract.*
>
> *15. We have noticed the terms of the contract of insurance. It was entered into for the purpose of covering the third party risk and not the risk of the owner or a pillion rider. An exception in the contract of insurance has been made, i.e., by covering the risk of the driver of the vehicle. The deceased was, indisputably, not the driver of the vehicle.*
>
> *16. The contract of insurance did not cover the owner of the vehicle, certainly not the pillion rider. The deceased was travelling as a passenger, stricto sensu may not be as a gratuitous passenger as in a given case she may not be a member of the family, a friend or other relative. In the sense of the term which is used in common parlance, she might not be even a passenger.*
>
> *In view of the terms of the contract of insurance, however, she would not be covered thereby.*
>
> *18. Yet again in Ghulam Mohammad Dar v. State*

of J&K and Ors. [(2008) 1 SCC 422], this Court opined that the words "injury to any person" as inserted by reason of the 1994 Amendment would only mean a third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. [See also The New India Insurance Company v. Darshana Devi & Ors. 2008 (2) SCALE 432]

19. The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

8. The aforesaid view has been followed by this Court in the case of ***The New Indian Assurance Co. Ltd. Vs. S.Krishnasamy (CMA.No.3567 of 2013 dated 10.12.2014)***, wherein the Division Bench held thus :-

"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."

9. In view of the ratio laid down in the aforesaid decisions, definitely, the deceased/cleaner cannot be brought within the ambit of third party with regard to an Act Only Policy, when the terms of the contract entered into between the insurer and the insured in regard to a private vehicle does not provide for cover with respect to persons other than the driver of the vehicle. Therefore, definitely, the cleaner would not be required to be indemnified by the insurance company in the absence of any separate premium being paid to cover the risk towards the cleaner.

10. In the case on hand, the policy being an Act Only Policy and the terms and conditions of the policy does not provide for covering the risk relating to cleaner of the tempo, rightly the Tribunal had absolved the insurance company of its liability and fastened the liability on the owner of the vehicle, which cannot be said to be erroneous and,

the same deserves to be confirmed.

11. For the reasons aforesaid, the appeal deserves to be dismissed and, accordingly, this appeal is dismissed. It is open to the appellants/ claimants to recover the amount of compensation awarded by the Tribunal from the 1st respondent/owner of the vehicle in the manner known to law. There shall be no order as to costs in this appeal.

04.10.2023

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Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

1.The Motor Accident Claims Tribunal Cum
Additional District Judge and Special Judge for EC Act Cases,
Salem.

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

M.DHANDAPANI, J.

skt

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