IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2483 of 2012

The New India Assurance Co. Ltd.,
Kumaran Shopping Complex,
Kumaran Road,
Tiruppur. ... Appellant

Vs.

1.R.Kutty
2.K.Senthilnathan
3.S.Gunasekaran ... Respondents

(The 2nd respondent herein was the first respondent before the tribunal and he remained exparte before the tribunal. Hence, summons to the 2nd respondent may be dispensed with).

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 30th day of July, 2010 made in M.C.O.P.No.72 of 2006, on the file of the Motor Accidents Claims Tribunal (Court of Additional District and Sessions Judge) (Fast Track Court No.III), Dharapuram and be pleased to dismiss the above claim as against the appellant.

For Appellant : Mr.K.Vinod
For Respondents : Mr.Ma.P.Thangavel for R1
R2 – Exparte

R3 – NRN

J U D G M E N T

The third respondent Insurance Company before the Motor Accidents Claims Tribunal, is the appellant herein. This appeal has been filed against the judgment and decree made in M.C.O.P.No.72 of 2006, by the Motor Accidents Claims Tribunal (Court of Additional District and Sessions Judge) (Fast Track Court No.III), Dharapuram dated 30.07.2010.

2.The brief facts of the case is that on 27.06.2002 at about 6.00a.m. the first respondent was travelling in a Maruthi Van bearing Registration No.TN 09 D 1517 from Vadamadurai to Vedasanthur, near Poothampatty Bridge. At that time, the driver of the van drove the vehicle in a rash and negligent manner and hit against the bridge, due to which, the vehicle was upset and the first respondent sustained grievous injuries.

3.Thereafter, the injured first respondent filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.5 Lakhs. After adjudication, the Tribunal, awarded a sum of Rs.2,45,000/- with interest at the rate of 7.5% from the date of petition till the date of payment and cost and directed the appellant Insurance Company to deposit the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant Insurance Company submitted that the appellant has filed this appeal questioning the liability. Admittedly, the injured claimant is the occupant of the private van and was travelling as un-authorized passenger. 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 occupant of the van.

5.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 claimant/ first respondent who was only an occupant of the vehicle, cannot be considered as third party of the vehicle. Hence, the policy will not cover the risk of the injured claimant. The learned counsel further submitted that the issue involved in the appeal 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 the appeal.

6.Per contra, the learned counsel appearing for the claimant/ 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 claimant and recover the same from the owner of the vehicle.

7.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 claimant and perused the materials available on record.

8.Admittedly, on 27.06.2002 at about 6.00 a.m. the first respondent was travelling in a Maruthi Van bearing Registration No.TN 09 D 1517 from Vadamadurai to Vedasanthur, near Poothampatty Bridge. At that time, the driver of the said van drove the vehicle in a rash and negligent manner and hit against the bridge, due to which, the vehicle was upset and the first respondent sustained grievous injuries.

9.Admittedly, the injured claimant is the occupant of the private van and was travelling as un-authorized passenger. 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 claimant.

10.The issue involved in the appeal 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."*

11.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.

12.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 claimant/ first respondent who was only occupant of the vehicle, cannot be considered as third party of the vehicle. Hence, the policy will not cover the risk of the injured claimant. 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 claimant and then recover the same from the owner of the vehicle involved in the accident cannot be ordered.

13.Applying the ratio laid down in the decisions cited supra, the civil miscellaneous appea is allowed. The judgment and decree dated 30.07.2010 made in M.C.O.P.No.72 of 2006, by the Motor Accidents Claims Tribunal (Court of Additional District and Sessions Judge) (Fast Track Court No.III), Dharapuram, is set aside. Liberty is granted to the injured claimant/ first respondent to recover the claim amount

from the owner of the vehicle/ third respondent in the manner known to law. The appellant Insurance Company is permitted to withdraw the amount, if any, already deposited by them.

14.The civil miscellaneous appeal is allowed. No costs. Consequently, the connected miscellaneous petition, if any, is 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
(Court of Additional District and Sessions Judge)
(Fast Track Court No.III),
Dharapuram.

M.DHANDAPANI,J.
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