IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

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

C.M.A.No.1348 of 2020

United India Insurance Co. Ltd.,
No.19/2A Junction Main Road,
Salem – 636 004. ...Appellant

Vs.

1. Sri.Umarani
2. Narayanasamy
3. A.S. Constructions Company,
   No.2/12B, Jelli, K.S.V.Sakkarai Chettipatty,
   Omalur Taluk, Salem District – 636 455. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the award and decree dated 25.09.2019 made in M.C.O.P.No.779 of 2017 on the file of the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.M.Selvam, for R1 & R2
No Appearance, for R3

JUDGEMENT

Challenging the judgment and decree dated 25.09.2019 passed in MCOP.No.779 of 2017 on the file of the Motor Accidents Claims Tribunal (Special District Court), Krishnagiri, the insurer is before this Court.

2. The case of the appellant is that, the 1st and 2nd respondents/claimants filed a claim petition claiming a sum of Rs.40,00,000/- on the ground that, on 20.02.2016, at about 21.20 hours, when the deceased Muralidharan @ Murali and one Ravindran were travelling as rider and pillion rider respectively in the motor cycle bearing Reg.No.TN-30-AX-1094, owned by the 3rd respondent, insured with the appellant insurance company, in order to avoid a major accident from oncoming vehicle, the deceased dashed against the centre median and as a result, the deceased sustained grievous injuries all over his body and got admitted in the hospital, however, the said Muralidharan subsequently passed away. Thereby, the 1st and 2nd respondents being the parents and dependents of the deceased, filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988. After contest, the Tribunal, vide

impugned decree awarded a compensation of Rs.15,79,956/-. Aggrieved with the said order, the present appeal has been filed by the insurance company questioning the liability of the insurer.

3. Learned counsel appearing for the appellant submitted that admittedly, the vehicle in question was insured with the appellant at the time of accident. However, it is pertinent to note that, the 3rd respondent had taken a Third party liability policy i.e., an Act only policy, and as per which, only the third party will be entitled to claim compensation at the hands of the appellant as no separate premium was paid to cover the risk of the rider. Further, the claim petition filed by the claimants as against the appellant/insurance company itself is not maintainable, since the deceased was riding the insured vehicle at the time of accident, he automatically steps into the shoes of the owner and he cannot claim to be a Third party and the deceased is the tort-feasor, and only due to his rash and negligent driving the entire accident had happened, for which, the appellant cannot be made liable to indemnify the 3rd respondent as the rider is not covered under the terms of the Act Only Policy. While so, without considering any of the above said facts, the tribunal had

passed the impugned award fixing the entire liability as against the appellant insurance company, which is *per se* illegal. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the 1st & 2nd respondents submitted that, at the time of accident, the deceased was aged about only 23 years and he was employed as a Site supervisor under the 3rd respondent, which is a construction company and was earning a sum of Rs.9,000/- per month and only as a part of execution of his job, he travelled in the 3rd respondent vehicle on the date of accident and thereby, the appellant being the insurer of the 3rd respondent vehicle, is liable to pay compensation for the death of the deceased. He further submitted that absolving the insurance company of its liability to pay the compensation cannot be done, as the vehicle in question is governed by the terms of the policy, which has been entered into between the insurer and the insured. Hence, after considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any modification. Accordingly, he prays for dismissal of the appeal.

5. Heard the learned counsel for the appellant and the learned counsel appearing for the 1st and 2nd respondents and perused the materials available on record.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major issue that arises for consideration in the present appeal is whether the appellant/ insurance company is liable to pay compensation for the death of the rider of the insured vehicle, 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 rider 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 rider 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 rider.

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 rider, necessarily the Tribunal ought to have absolved the appellant/ insurance company of its liability, instead of which, the tribunal had fastened the entire liability as against the appellant/insurance company, which is not sustainable and, the same deserves to be interfered with.

11. For the reasons aforesaid, this appeal stands allowed and the impugned award and decree dated 25.09.2019 made in M.C.O.P.No.779 of 2017 is set aside. It is open to the 1st and 2nd respondents/claimants to approach the competent forum to workout their remedy in the manner known to law, by impleading the necessary parties. Further, the period during which, the claim was pending before this Court as well as the tribunal shall stand excluded for

the purpose of computation of limitation, if any. The appellant/insurance company is entitled to withdraw the amount, if any already deposited by them. There shall be no order as to costs in this appeal.

14.12.2023

skt

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

1.The Motor Accidents Claims Tribunal (Special District Court),
Krishnagiri.

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

M.DHANDAPANI, J.

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