IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :

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

C.M.A.No.1704 of 2020
and
C.M.P.No.12540 of 2020

The Oriental Insurance Co. Ltd.,
No.20, Gandhi Road,
Kallakurichi. ... Appellant

Vs.

1.Sundarajan
2.Mohammed Shafi

3.United India Insurance Co. Ltd.,
25-Shankarnarayana Building,
M.G.Road, Bangalur – 1. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 26.06.2019 made in M.C.O.P.No.250 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kallakurichi.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.A.Rajakumar [R1]
Mr.D.Bhaskar [R3]

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JUDGEMENT

The Appellant/Transport Corporation has challenged the award passed by the Motor Accidents Claims Tribunal, Sub Court, Kallakurichi, in M.C.O.P.No.250 of 2012, dated 26.06.2019.

2. The facts, which is culminated in the filing of the claim petition are as follows :-

(i) On 30.11.2010 at about 03.35 a.m. in the early morning hours, when the claimant was driving his vehicle bearing Reg.No.TN 31 H 3904, the vehicle belonging to the first respondent insured with the second respondent bearing Reg.No.RJ 05 A 1229, driven by its driver in a rash and negligent manner, dashed against the vehicle driven by the claimant, in which the claimant suffered fracture and other grievous injuries all over the body. Therefore, he had filed a claim petition claiming a compensation of Rs.20,00,000/- before the Tribunal.

3. Before the Tribunal, the claimant examined himself as P.W.1 and marked 6 documents viz., Ex.P.1 to Ex.P.6. No witnesses were examined nor any documents were marked on the side of the respondents. After

adjudication, the Tribunal by its award dated 26.06.2019 awarded a sum of Rs.2,08,000/- as compensation and directed the third respondent/insurance company to pay the said compensation to the claimant. Aggrieved by the same, the insurance company has filed the present appeal before this Court.

4. The learned counsel appearing for the appellant/insurance company submitted that, when the Tribunal has clearly held that the accident had happened due to the negligent driving by the claimant, the liability cannot be fastened on the appellant, who is the insurer of the vehicle of the claimant as the claimant cannot be brought within the ambit of third party, since the vehicle was insured only with an Act Only Policy. However, without appreciating the above, the Tribunal has erroneously directed the appellant to pay the compensation, which is erroneous and the same requires interference.

5. Per contra, the learned counsel appearing for the first respondent/claimant submitted that the Tribunal has carefully considered all the materials and also the policy document in proper prospective and has awarded compensation and therefore, no interference is warranted.

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

7. There is no quarrel that the vehicle of the claimant was insured with only an Act Only Policy. A perusal of the award passed by the Tribunal reveals that the Tribunal has rendered a finding that the negligence towards the accident was attributable only to the claimant and only due to his negligence, the accident had happened and therefore, the respondents 2 and 3 were absolved of their liability to pay the compensation. Since the claimant had suffered injuries and was carrying a policy of insurance with the appellant/insurance company, the Tribunal computed the compensation and directed the appellant to pay the same to the claimant. It is the case of the appellant that the vehicle was insured only with an Act Only Policy, which caters only to third party insurance and the claimant being the owner of the vehicle, who was driving the vehicle at the particular point of time and sustained injuries cannot be treated to be a third party for the purpose of claiming compensation.

8. In this regard, useful reference can be had to the decision of the Apex Court in *Balakrishnan case (supra),* wherein the Apex Court, while adverting to the decision of the Delhi High Court in ***Yashpal Luthra – Vs – United India Insurance Co. Ltd. (2011 ACJ 1415 (Del))***, 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.*"
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> *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. <u>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</u>*

> *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."*
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> *(Emphasis Supplied)*

9. From the above said decision, it is evident that where the vehicle is covered only with an Act Only Policy, neither the owner of the vehicle nor the persons travelled in the vehicle could be deemed to be a third party in the absence of any additional premium paid. In the case on hand, no additional premium having been paid by the claimant towards covering the third party risk or towards personal accidental cover for the owner, fastening the liability on the appellant/insurer to pay compensation is wholly erroneous. The said fact has not been properly appreciated by the Tribunal and therefore, the award passed by the Tribunal is erroneous, which deserves to be set aside.

10. Accordingly, the Civil Miscellaneous Appeal is allowed and the

judgment and decree dated 26.06.2019 made in M.C.O.P.No.250 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kallakurichi is set aside. If any amount deposited by the appellant/Insurance Company before the Tribunal, the Insurance Company is permitted to withdraw the same by making appropriate application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

13.12.2023

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

1.The Motor Accidents Claims Tribunal, Sub Court, Kallakurichi.

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

M.DHANDAPANI, J.,

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