IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 30.03.2023

Orders Pronounced on : 27.04.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.1632 of 2020
and C.M.P.No.12047 of 2020

The New India Assurance Company Ltd.,
11-19 and 20, Second Floor,
People Park Building,
Government Arts College Road, Coimbatore. ... Appellant

Vs.

1.Maheswari
2.Minor Dharshika
Rep. By her guardian and friend
Maheswari/1st respondent herein
3.Manjula ...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgement and decree dated 07.02.2019 passed in M.C.O.P.No.500 of 2015 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam.

For Appellant : Mr.R.Sivakumar

For R1 to R3 : Mr.Thangavadhana Balakrishnan

JUDGMENT

(Judgment of the Court was delivered by **K.GOVINDARAJAN THILAKAVADI,J.**)

Aggrieved by the finding with regard to the liability and quantum of compensation, the appellant/Insurance Company has preferred this appeal.

2. Brief facts leading to the appeal are as follows:

On 22.03.2015 at about 13.30 hours, the deceased namely Senthil @ Senthilkumar was travelling in a Xylo car bearing Registration No.TN-37-CJ-1870. At that time, the driver of the Xylo car drove the car on Masinaguidi to Ooty main road, near Sadappati with high speed in a rash and negligent manner without observing the road rules and upset on the road side Pallam.

Due to the accident, the deceased sustained fatal injuries on the head, chest and injuries all over the body. Immediately after the accident the deceased was admitted at Government Hospital, Masinagudi and for further treatment he was referred to Government Hospital, Ooty, but he died on the way to the hospital. The accident was solely happened due to rash and negligent driving by the driver of the Xylo car. The Masinagudi Police has registered a case under Sections 279, 337, 338 and 304 (A) IPC, in Crime No.39 of 2015.

3. According to the claimants, the deceased was working as a owner-cum-driver in the Tourist Taxi and was earning a sum of Rs.20,000/- per month. Based on the above contentions, the claimants have claimed a sum of Rs.20,00,000/- as compensation for the death of the deceased Senthil @ Senthilkumar.

4. The appellant/Insurance Company resisted the claim petition on the ground that no extra premium paid to cover the risk of the owner of the vehicle. At the time of the accident, the deceased was not driving the vehicle involved in the accident and therefore, the appellant/Insurance Company is

not liable to pay any compensation to the claimants. Their further contention is that the Xylo car was insured with the appellant/Insurance Company by the deceased for the period from 03.07.2014 to 02.07.2015 under Commercial Vehicle Package Policy. As per the said policy, the appellant/Insurance Company has paid a sum of Rs.2,00,000/- to the claimants on 10.09.2015 towards compensation for the death of the owner of the said vehicle. Therefore, the appellant/Insurance Company is not liable to pay further compensation to the claimants for the death of the deceased, who is the owner of the vehicle and who is not the third party to the said vehicle.

5. Before the Tribunal, the 1st respondent was examined as P.W.1, 3rd respondent was examined as P.W.2 and one Prabu was examined as P.W.3 and marked Exs.P1 to P18. On the side of the appellant/Insurance Company, one Shri Dharan was examined as R.W.1 and marked Exs.R1 to R3.

6. The Tribunal, on evaluation of pleadings and evidence, found that the accident had occurred in the manner as set out in the claim petition and accordingly, fastened the liability on the appellant/Insurance Company to pay

compensation of Rs.21,54,800/- with interest at the rate of 7.5 % per annum from the date of claim petition till the date of realisation.

7. Aggrieved by the award passed by the learned Tribunal, the above appeal is preferred by the Insurance Company.

8. Heard Mr.R.Sivakumar, learned counsel appearing for the appellant/Insurance Company and Mr.Thangavadhana Balakrishnan, learned counsel appearing for the respondents and perused the materials available on record.

9. The learned counsel for the appellant/Insurance Company submitted that the Tribunal has failed to note that the deceased was the owner/insurer of the Xylo car and at the time of accident, the deceased was travelling in the said car and one Anbu @ Anbarasan was driving the above mentioned car and the accident occurred due to the negligent act of the driver of the Xylo car owned by the deceased Senthilkumar. He further submitted that the policy does not cover the deceased owner/insured of the Zylo car and the deceased

was not a third party. According to the learned counsel for the appellant/Insurance Company the terms and conditions of policy marked as Ex.R1 would only cover the person who travelled in the Xylo car at the time of accident. However, the claims Tribunal erred in coming to the conclusion that the deceased who travelled in the Xylo car was also a third party. The above finding of the claims Tribunal is erroneous for the reason that the statutory liability of insurer is only to the extent of indemnification of insured against the third party or in respect of damages to property and no question of holding the insurer liable to indemnify the insured for his own death. He would further submit that the owner/insured would not come within the purview of the Section 146 or 147 of Motor Vehicle Act for the purpose of payment of compensation. It is further submitted that the appellant/Insurance Company issued a policy in respect of the Xylo car as Commercial Vehicle Package policy and hence, the appellant is liable to pay only a sum of Rs.2,00,000/- to the claimants under personal accident policy and the appellant has already paid a sum of Rs.2,00,000/- to the respondents which they are entitled under the insurance policy marked as Ex.R1. The claims Tribunal failed to consider the evidence adduced by R.W.1 and documents marked as Exs.R1 and R3 and erroneously fixed the liability on the appellant/Insurance Company. To support his contention, the learned counsel for the appellant/Insurance Company relied upon the judgments reported in 2017 (2) TNMAC 674 (DB); 2018 (1) TNMAC 466 (DB); 2018(2) TNMAC 286 (SC); 2020 (1) TNMAC 540 & 2020 (1) TNMAC 560.

10. Repudiating the submissions of the learned counsel for the appellant, the learned counsel appearing for the claimants/respondents would contend that the deceased travelled in the car which was driven by one Anbu @ Anbarasan and therefore, the deceased is covered under the provisions of the insurance policy. According to the learned counsel if the deceased has travelled as a gratuitous passenger and is not required to be covered under Section 147 of the Motor Vehicles Act and in such event, the insurer cannot be held liable to pay compensation if the owner of the vehicle had taken only as an “act only policy” or “liability only policy”. But, in the present case, the position is different under a comprehensive or package policy. The learned counsel for the respondents/claimants also contended that the insurance policy covers the death or bodily injury that may be suffered by the owner

cum driver of the vehicle in case, the owner cum driver travelling in the car. In this context, the learned counsel placed reliance on the decisions rendered by the Honourable Supreme Court in:

National Insurance Co.Ltd., Vs. Balakrishnan & Others, in *Civil Appeal No.8163 of 2012 in SLP(Civil) No.1232 of 2012.*

11. Where it is held that, if the policy in question and in a comprehensive/package policy, the liability would be fastened on the insurer.

12. We have given our anxious consideration to the rival submissions made and perused the materials placed on record. On the basis of the above submissions, the only question that arises for consideration in this appeal is whether the claim petition filed by the claimants under Section 166(1) of the Motor Vehicles Act is maintainable against the Insurance Company for the death of the deceased cum owner of the vehicle in a Motor Accident over and above the compensation payable under the compulsory personal accident cover.

13. As far as the present case is concerned, the deceased was travelling in the Xylo car in question owned by him at the time of accident, the driver of the car drove the vehicle in a rash and negligent manner and fell into a pit which led to the accident. No other Motor Vehicle involved in this case. Thus, the accident did not involved any other Motor Vehicle other than the one in which the deceased was travelling as a passenger. Therefore, the liability of the appellant/Insurance Company is only to the extent of indemnification of the insured against the third person or in respect of damages of property. While so, the Insurance Company cannot be fastened with any liability under the provisions of the Motor Vehicle Act for the death of the deceased Senthil Kumar who himself was the owner of the vehicle and when no other Motor Vehicle was involved in this case. Therefore, the question of the insurer being liable to indemnify the deceased/owner of the vehicle does not arise. Since the deceased himself for the owner of the vehicle and not a third party, the claim petition filed by the claimants will not come within the purview of Sections 146 and 147 of Motor Vehicle Act for the purpose of payment of compensation.

14. In the light of the principles laid down in the decision case referred by the learned counsel appearing for the appellant/Insurance Company reported in 2017 (2) TNMAC 674 (DB), it is needles to mention that the claimants are entitled for payment of Rs.2,00,000/- only towards personal accident cover proportionate to the premium paid by the deceased, which amount admittedly paid by the Insurance Company to the claimants.

15. It is made clear that the respondents/claimants are only entitled for a sum of Rs.2,00,000/- towards compulsory personal accident coverage as per the terms and conditions of the insurance policy, Ex.R1 and which is already paid to the respondents/claimants.

16. In the result, this Civil Miscellaneous Appeal is allowed. The judgment and decree dated 07.02.2019 passed in M.C.O.P.No.500 of 2015 on the file of the Motor Accident Claims Tribunal, Sub Court, Sathyamangalam is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

17. It is needless to say that the appellant/Insurance Company is entitled to recover the amount if any, paid to the claimants pursuant to the award passed by the tribunal, by filing appropriate application before the tribunal.

(D.K.K., J) **(K.G.T., J)**

27.04.2023

Internet : Yes / No
Index : Yes / No
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To

1.The Sub Judge,
Motor Accident Claims Tribunal,
Sathyamangalam.

2.The Section Officer
VR Section
High Court
Madras.

D.KRISHNAKUMAR,J.

and

K.GOVINDARAJAN THILAKAVADI,J.

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Pre-Delivery Order in
C.M.A.No.1632 of 2020

27.04.2023