IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3220 of 2014

and M.P.No.1 of 2014

United India Insurance Company Limited,
Cuddalore. .. Appellant

versus

1. Abdul Azis
2. Velmurugan ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act against the award and decree dated 09.09.2011 made in M.C.O.P.No.73 of 2010 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Court / Fast Track Court No.1) Chidambaram.

For appellant : Mr.D.Bhaskaran

For Respondent No.1 : Mr.A.Murugan

For Respondent No.2 : Served – No appearance

JUDGMENT

The Insurance Company has come forward with this appeal, as against the award and decree dated 09.09.2011 in M.C.O.P.No.73 of 2010 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Court / Fast Track Court No.1) Chidambaram.

3. It is the case of the appellant that on 28.01.2007, when the first respondent was going to Cuddalore by car bearing Registration No.TN 22 A 6881, owned by the second respondent and insured with the appellant insurance company. When they were travelleing near Kothattai Bus stop at about 4.00 p.m., the driver of the car driven the vehicle in rash and negligent manner and dashed against the tamarind tree, in the result, the first respondent sustained injuries and thereafter admitted in hospital and taken treatment. Thereafter, the first respondent has filed claim petition for the injuries sustained by him before the Motor Accidents Claims Tribunal. The Tribunal, considering the pleadings, oral and documentary evidence, vide order dated 09.09.2011, allowed the claim petition in part and awarded compensation for a sum of Rs.1,39,309/- to the first respondent. Challenging the quantum of compensation, the present appeal has been filed by the Insurance company.

4.The learned counsel appearing for the appellant Insurance company submitted that the first respondent has travelled in a private car as occupant, due to rash and negligence of the driving, the first respondent sustained injuries. The second respondent is having Act policy and the injured are the occupant of the car. As such, there is no coverage for the occupants/injured persons/first respondent of the car. Without considering the said fact, the Tribunal has awarded the compensation in favour of the first respondent, which is liable to be set aside.

5. The learned counsel further submitted that though the first respondent is a third party and he was travelled as occupant of the car and therefore, he is not liable to pay compensation. The Tribunal ought to have treated the claimant as third party and has to rejected the claim petition. The compensation awarded by the Tribunal is unsustainable to the facts and circumstances of the case because there was no coverage n the policy for the occupant.

In this context, the learned counsel relied upon the decision of this Court in the case of New India Assurance Co. Ltd., Vs.S.Krishnasamy reported ***in 2015 (1) TNMAC 19 (DB).***

6. Per contra, the learned counsel appearing for the first respondent contended that even though, the third respondent is having Act policy, the Tribunal, after analyzing the materials available on record and also the

ruling cited on either side, has rightly awarded the quantum of compensation and hence, there is no need to interference with the same and therefore, appeal has to be dismissed.

7.Heard the learned counsel for the appellant as well as the learned counsel appearing for the first respondent and also perused the materials available on record.

8. The facts of the case are not in dispute. Admittedly, the second respondent is the owner of the car, which was insured with the appellant. The first respondent, went to Cuddalore for purchasing spare parts for his lorry, when returning to Keerapalayam in the second respondent car nearing Kothattai Bus Stand, the said vehicle was involved in accident due to rash and negligent driving of the first respondent and dashed against the tamarind tree. It is not disputed that the first respondent sustained injuries as stated in the claim petition.

9. The issue arises in these appeals is whether the policy taken by the second respondent is an "Act policy" or "comprehensive policy' and the first respondent is entitled to get compensation from the appellant.

10. On perusal of the counter affidavit filed by the appellant Insurance company before the Tribunal, which makes it clear that the policy taken by the second respondent is an Act Policy and the Tribunal also arrived at a conclusion that the policy is an Act Policy. If it is so, whether the occupant is entitled for claiming compensation in the category of third party. The said issue has been elaborately considered by the Hon'ble Division Bench of this Court as stated supra. The relevant paragraphs are 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. In view of the above discussion, this Court is of the considered view that since the policy is only an Act Policy issued by the appellant-Insurance company to the insurer second respondent, who is the owner of the car, cannot be considered as third party and the injured person/first respondent is 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 policy will not cover the risk of the first respondent and

the compensation awarded by the Tribunal cannot be applied to the facts of the case, since the appellant is not liable to pay the compensation to the injured person. The accident had happened only due to rash and negligent act of the first respondent.

12. In the result, the appeal is allowed and the award passed by the Tribunal is set aside. No costs. Consequently, connected miscellaneous petition is also closed.

06.10.2023

Index : Yes/no
RLI

<u>To</u>

The Motor Accidents Claims Tribunal
(Additional District and Sessions Court / Fast Track Court No.1)
Chidambaram.

M.DHANDAPANI.,J.

RLI

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