IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.435 of 2020
and
C.M.P.No.2562 of 2020

The United India Insurance Company Ltd.,
No.73-c. Divisional Office,
M.T.H.Road, Ambattur,
Chennai-600 053. ... Appellant

Vs.

1.Subramaniam

2.Vijaya

3.Vimala

4.Iyyappan

5.Elumalai ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 31.10.2018 made in M.C.O.P.No.413 of 2015 on the file of the Motor Vehicle Accident Claims Tribunal(In the Court of IV Additional District Judge, Ponneri.

For Appellant : M/s.D.Bhaskaran

For Respondents : Mr.R.Venkatesulu for R1 to R4

JUDGMENT

The Appellant Insurance Company has filed the above appeal challenging the judgment and decree dated 31.10.2018 made in M.C.O.P.No.413 of 2015 on the file of the MACT, IV Additional District Judge, Ponneri.

2. The appeal is filed by the Insurance Company challenging its liability to pay the compensation determined by the Tribunal. The accident, negligence and quantum of compensation awarded by the Tribunal are not disputed. Only question raised in the appeal is as to liability of the Insurance Company to pay compensation to the claimants. According to the appellant Insurance Company, the policy is Act only policy and therefore the claimant pillion rider was not covered by the policy.

3. The learned counsel for the respondent submitted that even though it is Act only policy in the similar circumstances, the Kerala High

Court in ***Oriental Insurance Co. Ltd. vs. Ajayakumar***, reported in 1999 SCC Online Kerala 291 and in ***United India Ins. Co. Ltd. vs. Appukuttan & Anr***., reported in 1995 SCC Online Ker 99, held that the Insurance company can be mulcted with the liability. The learned counsel therefore submitted that the judgment of the Tribunal mulcting the liability on the Insurance Company need not be interfered with.

4. I have heard both the counsel appearing on either side and perused the entire records.

5. It is seen that the policy is marked as Ex.P.4 and perusal of the policy shows that the policy is a liability only policy which would mean that the policy is taken for meeting the liability for third parties only under the Motor Vehicles Act.

6. Admittedly, in present case, the respondent claimant was a pillion rider and therefore in the absence of comprehensive policy, the pillion rider cannot be covered. The contract of the insurance as far as liability to a pillion rider is concerned is contractual in nature and therefore unless and until additional premium is paid covering the

liability to the pillion rider, the Insurance Company cannot be mulcted with the liability. The Tribunal having held that the policy was liability only policy, nevertheless mulcted the liability on the appellant Insurance Company on irrelevant grounds.

7. The learned counsel for the respondent/claimant relied on the following full bench judgment of Kerala High Court, ***Oriental Insurance Co. Ltd. vs. Ajayakumar***, reported in 1999 SCC Online Kerala 291, after discussing certain judgments and the earlier judgments of the Division Bench of Kerala High Court, in ***United India Ins. Co. Ltd. vs. Appukuttan & Anr***., reported in 1995 SCC Online Ker 99, held that gratuitous passengers in private vehicle were also covered by Act Policy.

8. The learned counsel for the appellant on the other hand relied on the judgment of the Hon'ble Apex Court, in ***United India Insurance Co.Ltd. Shimla Vs. Tilak Singh*** and others, reported in 2006 (2) CTC 661, and also judgment of this Court, in ***The New India Assurance Co. Ltd., Salem vs. Uthra and others***, reported in 2017 SCC OnLine Mad 15006, wherein it was held that in Act only policy the pillion rider was

not covered, therefore, the liability was that of the owner only. In this regard, the judgment of Hon'ble Supreme Court, in ***National Insurance Company vs. Balakrishnan***, reported in 2012 (2) TN 637 (SC) and ***Oriental Insurance Company Limited vs. Sudhakaran K.V. And others***, reported in (2008) 7 SCC 428, are relevant.

9. As I have found that the policy was an act only policy and in view of the binding precedents referred to above, I am of the view, the appellant is not liable to pay compensation to pillion rider. The coverage to the pillion rider is only contractual in nature and in the absence of additional premium, the Insurance Company cannot be mulcted with the liability. In the light of the above discussions, I am of the view that the judgment and decree of the Claims Tribunal deserves to be set aside. It is made clear that claimant shall be entitled to recover the compensation awarded by the Tribunal along with interest from the owner of the vehicle. It is submitted by the learned counsel for the appellant Insurance Company that it had deposited 25% of award amount, therefore appellant

N.MALA, J.

Insurance is permitted to withdraw the amount deposited by it. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

06.04.2023

jai

Index : Yes/No
Neutral Citation : Yes/No

To:

1.MACT, IV Additional District Judge,
Ponneri.

2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.435 of 2020