IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4052 of 2019
and C.M.P.No.22895 of 2019

United India Insurance Co.Ltd.,
P.B.No.12, D Block, 1st Floor,
Paxhery Plaza, Kodathipadi
Mannarkkad
Palakkad, Kerala. ... Appellant/2nd Respondent

Vs

1.Sahira
2.K.A.Shaniba
3.K.Surumi
4.K.Sharook (Minor)
5.Muhammed Yakoob
6.Rahamath ... Respondents 1 to 6/Petitioners

7.S.Murali ... 7th Respondent/1st Respondent
8.P.Raju ... 8th Respondent/3rd Respondent

9.The New India Assurance Co.Ltd.,
D.No.571 B, Ward 13, SRMS Complex,
1st Floor, Dharmapuri main road,
Mecheri Post, Mettur Taluk,
Salem District-636451. ... 9th Respondent/4th Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 10.04.2019 made in M.C.O.P.No.871 of 2017 on the file of Motor Accident Claim Tribunal, (Principal District Judge, Krishnagiri).

For Appellant	... Mr.A.Dhiraviyanathan
For Respondents	... Mr.J.Pradeep [R1 to R6] ... Notice not in ready [R7] ... No Appearance [R8 & R9]

JUDGMENT

Aggrieved by the impugned award dated 10.04.2019 passed by the Motor Accident Claim Tribunal, Principal District Judge, Krishnagiri in M.C.O.P.No.871 of 2017, the Appellant/Insurance Company has filed the present appeal questioning its liability as well as the quantum of compensation awarded by the Tribunal.

2. On 08.06.2017, when the deceased namely Mohamed Basheer was proceeding in the car bearing regn.No.T.N.25.O.5761 belonging to the 7th respondent and insured with the Appellant/Insurance Company, the 8th respondent's lorry bearing regn.No.T.N.52.T.2419 insured with the 9th

Respondent driven in a rash and negligent manner, at that time, the driver of the said lorry without giving any signal, had suddenly stopped the vehicle in the middle of the road, as a result of which, the deceased/driver of the car lost his control over the car and dashed behind the lorry thereby the deceased sustained fatal injuries and succumbed to the injuries on the spot for which a complaint was registered against the driver of the car in Crime No.207 of 2017. Aggrieved by the loss incurred in view of the said accident, the claimants have filed a claim petition claiming compensation towards the death of the deceased under various heads.

3. Before the Tribunal, the 1st Claimant was examined as P.W.1 and examined P.W.2 and marked Ex-P1 to P-19. R.W.1, R.W.2 & R.W.3 were examined on the side of the respondents, and marked Ex.R-1 to Ex.R-5. The Tribunal after considering the oral and documentary evidences, vide impugne decree has awarded a compensation of Rs.13,13,000/- to the claimants and fastened the liability jointly and severally on the owners and insurers of both the vehicles. Challenging the said award, the Appellant-Insurance company

has filed the present Appeal.

4. Learned counsel appearing for the Appellant/Insurance Company submitted that at the time of accident the driver of the 7th respondent's vehicle was not in possession of a valid driving licence, which is in violation of the policy conditions and that the said accident happened solely due to the rash and negligent driving of the driver of the vehicle, for which, the insurer of the vehicle cannot be made liable. Further, the 7th respondent/owner of the vehicle had taken a third party liability policy, viz., an Act Only Policy and no separate premium had been paid by the 7th respondent/owner of the vehicle for covering the risk of the occupants of the vehicle. Therefore, the claim petition filed by the 1st respondent under Section 166 of the MV ACT itself is not maintainable. While so, without considering the above said fact, the Tribunal had erroneously fastened the liability on the appellant/insurance company which is not sustainable. He further relied upon the decision of the Hon'ble Division Bench of this Court in the case of ***New India Assurance Co. Ltd., Vs. S.Krishnasamy*** in ***C.M.A.No.3567 of 2013*** dated ***10.12.2014*** reported in ***2015***

(1) TN MAC 19 (DB) to hold that, *the occupants of the private car cannot be considered as "Third party" and they are not entitled to claim compensation as against the insurer in case of non-payment of separate premium for covering the risk of the occupants of the vehicle.* Accordingly, he prayed for appropriate orders.

5. On the above contention, this Court heard the learned counsel appearing for the Respondents 1 to 6/claimants and perused the materials available on record.

6. The major issue that arises for consideration in the present appeal is whether the deceased being one of the occupant of the private car is eligible to claim compensation at the hands of the insurance company, though the vehicle in question is insured only under an Act Only Policy.

7. As rightly pointed out by the learned counsel for the appellant/ insurance company, the issue which is raised in the present appeal is no longer *res integra,* as the similar issue has already been considered by the Hon'ble

Division Bench of this Court in the case of ***New India Assurance Co. Ltd., Vs. S.Krishnasamy*** in ***C.M.A.No.3567 of 2013*** dated ***10.12.2014*** reported in ***2015 (1) TN MAC 19 (DB)***, wherein the Division Bench of this Court held thus:-

> *“17. In the judgment reported in 2006(1) TN MAC 36(SC) [United India Insurance Co. Ltd., Shimla vs. Tilak Singh and others], the Hon'ble Supreme Court has held as follows:-*
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> > *"15. In Pushpahai Purshottam Udesh and Ors. v. Ranjit Ginning & Pressing Co. (P) IM and Anr. [1977]3SCR372 the insurance company had raised the contention that the scope of statutory insurance under Section 95(1)(a) read with 95 (1)(b)(i) of the Motor Vehicles Act, 1939 does not cover the injury suffered by a passenger and, since there was a limited liability under the insurance policy, the risk of the insurance company would be limited to the extent it was specifically covered. Alter referring to the English Road Traffic Act, 1960, and Halsbury's Laws of England. (Third Edition) this Court came to the conclusion that Section 95 of the 1939 Act required that the policy of insurance must be a policy insuring the insured against any liability incurred by him in respect of death or bodily injury to a third party and rejected the contention that the words "third party" were wide enough to cover all persons except the insured and the insurer. This Court held as under: (vide para 20)*
> >
> > > *Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured the plea of the counsel for the insurance company will have to be accepted and the insurance*

company held not liable under the requirements of the Motor Vehicles Act.

22. For the aforesaid reasons, we allow the appeal and set aside the impugned judgment holding that the appellant-insurance company is not liable to pay the compensation awarded to the claimants"

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.

19. Hence, we are of the considered view that since the Act policy did not cover the risk, the Insurance Company is not liable to pay any compensation to the claimants/dependents of the deceased and the owner of the vehicle alone is liable to pay damages to the claimants, as the accident occurred due to rash and negligent act of the driver of the vehicle."

8. In view of the ratio laid down in the aforesaid decisions, definitely, the occupant of the private car 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 occupant of the car 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 occupant of the car.

9. 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 the occupant, the Tribunal ought to have absolved the insurance company of its liability and should have fastened the liability on the 7th respondent/owner of the vehicle, instead of which, the tribunal had fastened the liability jointly and severally on the 7th Respondent/owner of the vehicle as well as the Appellant-Insurance company, which is wholly erroneous and, the same deserves to be set aside.

10. For the reasons aforesaid, the appeal stands allowed. However, it is

made clear that the Appellant/Insurer of the car is not liable to indemnify the claimants towards the death of the occupant of the car and and accordingly, this Court fastens the liability on the 7th respondent/owner of the car to the extent of 50% and to that extent the impugned award dated 10.04.2019 made in M.C.O.P.No.871 of 2017 is set aside. Further, the 9th Respondent/insurer of the offending vehicle is directed to deposit 50% of the award amount to the credit of M.C.O.P.No.871 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of four weeks (4) from the date of receipt of a copy of this judgment. The appellant/insurance company is entitled to withdraw the award amount, if any already deposited by them before the tribunal. Further, the Respondents 1 to 6/claimants are at liberty to recover 50% of the compensation amount from the 7th respondent/owner of the car in the manner known to law. There shall be no order as to costs in this appeal. Consequently, the connected Miscellaneous petition is closed.

30.11.2023

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

M.DHANDAPANI, J

NHS

To

1.The Motor Accident Claims Tribunal
Principal District Judge, Krishnagiri.

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

C.M.A.No.4052 of 2019