IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.Nos.627 & 628 of 2022
& CMP.Nos.4480 & 4486 of 2022

M/s.United India Insurance Company Limited,
Branch Office,
No.5, Big Bazaar Street,
Dharapuram Taluk,
Tiruppur District. ... Appellant in both cases

vs.

1.A.Palanivelrajan

2.N.Senthilkumar

3.C.Sathishkumar ... Respondents in both cases

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 03.09.2021 made in M.C.O.P.Nos.134 & 136 of 2016 respectively on the file of the Motor Accident Claims Tribunal, III Additional District Court, Dharapuram.

For Appellants : Mr.S.Arun Kumar
(in both the CMAs')

For R1 : M/s.V.Regunathan
(in both the CMAs'

For R2 : Ex-parte
(in both the CMAs'

For R3 : Ex-parte
(in both the CMAs'

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COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed against the award and decree dated 03.09.2021 made in M.C.O.P.Nos.134 & 136 of 2016 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Dharapuram.

2.As the claim petitions were disposed by a common order, the present appeals are also disposed of by a common order.

3.The brief facts of the case are that on 09.10.2015, while the deceased was travelling along with her husband and one Jayalakshmi in a Maruti Omni car, the driver of the car drove the car in a rash and negligent manner and dashed against the rear-side of the Tractor. Due to the impact, the deceased Uma maheswari died on the spot and other two occupants sustained grievous injuries. The deceased was aged about 39 years at the time of the accident, was an agricultural coolie and earning a sum of Rs.20,000/- per month as income. The claimant/husband of the deceased filed the claim petition in M.C.O.P.No.134 of 2016 seeking Rs.25,00,000/- as compensation for the death of the said Uma maheswari in the accident. The claimant further filed another claim petition in M.C.O.P.No.136 of 2010 claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident.

4.For the sake of convenience parties herein will be referred to as per the ranking in the claim petition.

5.The first and second respondents viz., the driver and owner of the Omni car, in which the deceased and the claimant travelled remained ex-parte. Before the Claims Tribunal, the third respondent/Insurance Company contested the claim petition and filed the counter denying all the averments made in the claim petition, apart from disputing the negligence, quantum and liability.

6.The third respondent/Insurance company specifically pleaded that Section 147 of the Motor Vehicles Act did not envisage statutory coverage to the occupants of the car. It was further stated that as no additional premium was collected the insurance company was not liable to pay the compensation to the claimants. In effect the contention of the third respondent was that the policy was only an Act policy and therefore, the Insurance company was not liable to pay compensation to the claimants.

7.Before the Claims Tribunal, the claimant examined himself as PW1 and marked Ex.P1 to Ex.P15 in support of his claim. On the side of the respondent one witness was examined and the Insurance policy was marked as Ex.R1. The Claims Tribunal on an assessment of the entire evidence on record held that the accident occurred only due to the negligence of the first respondent i.e. the driver of the Omni car. On the issue of liability the Tribunal held that the claimant as well as the deceased were third parties and therefore the Insurance Company was liable to pay the compensation to the claimant.

8.The Tribunal on the basis of the evidence on record assessed the compensation in M.C.O.P.No.134 of 2016 at Rs.16,90,000/- along with 7.5% interest and M.C.O.P.No.136 of 2016, the Tribunal assessed the compensation at Rs.1,06,787/- along with 7.5% interest. Aggrieved by the award and decree of the Claims Tribunal in the said M.C.O.P.Nos.134 and 136 of 2016, the Insurance Company, third respondent in the claim petitions has filed the above appeals, challenging the finding on liability.

9.The only point to be decided in the appeals is whether the third respondent/Insurance Company is liable to pay compensation to the claimant's.

10.The learned counsel appearing for the appellant, relying on Ex.R1 Insurance Policy submitted that the policy was only a liability/Act policy and therefore the Insurance Company was not liable to pay the compensation. He further referred to the terms of the policy and submitted that as no additional premium was paid covering the risk to the passengers travelling in the private car, the Insurance Company was also not liable to indemnify the insured. In support of the said submission, the learned counsel relied on the Judgment of the Hon'ble Division Bench in the case of ***New India Assurance Company Limited Vs. S.Krishnaswamy in CMA.No.3567 of 2013*** reported in ***2015 (1) TNMAC 19***.

11.The learned counsel for the respondents on the other hand submitted that this Court may consider the plight of the claimant and direct the Insurance Company to pay and recover from the insured.

12.I have heard both the learned counsels and have perused the materials placed on records.

13.It is not disputed that the accident occurred on 09.10.2015, while the claimant, his deceased wife and one Jayalakshmi were travelling in the Omni car. It is seen from the evidence that the claimant as well as the deceased were occupants of the private Omni car. The Insurance Policy is an Act only Policy and does not cover the occupants of the car. The occupants of private car would be covered only under a Package Policy, where additional premium is paid for covering them. In the present case the Insurance policy was marked as Ex.R1 and it is seen that the policy is a private car liability policy. In the schedule to the policy it is seen that the premium was paid covering the third party claims and legal liability to the driver. No additional premium was paid covering the two occupants of the car. As rightly contended by the learned counsel for the appellant when no additional premium was paid covering the risk to the occupants of the car, the Insurance company could not be mulcted with the liability. In ***New India Assurance Company Limited Vs. S.Krishnaswamy***, cited supra, after discussing a number of Judgments on the said issue it was held in paragraph Nos.18 and 19 as follows:

> *"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 40 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."

14.In view of the above said Judgment of this Court, on the facts of the case and also the terms of the policy, which was marked as Ex.R1, I am of the view that the third respondent Insurance Company is not liable to pay the compensation. The submission of the learned counsel for the respondent praying for a direction to the third respondent/Insurance Company to pay and recover from the owner cannot be entertained in view of the aforesaid Judgment of the Hon'ble Division Bench.

15.In the light of the above said discussions, the appeals are allowed. It is made clear that the claimant shall be at liberty to recover the compensation from the second respondent/owner of the Omni car. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

28.06.2023

Index : yes/no
Internet : yes/no
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To

1.The Motor Accident Claims Tribunal,
III Additional District Court,
Dharapuram.

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

N.MALA, J.

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