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C.M.A.No.626 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.626 of 2020

Vasanthi

...Appellant

Vs.

1. R.Anandhan

2. United India Insurance Company Limited,
Door No.5B/11, 1st Floor, State Bank of India,
Salem Road, Rasipuram Town,
Rasipuram Taluk, Namakkal Road.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree dated 06.12.2018 in MCOP.No.45 of 2016 on the file of the Motor Accidents Claims Tribunal, Rasipuram.

For Appellants : Mr.R.Nalliyappan

For Respondents : No Appearance, for R1
M/s.I.Malar, for R2



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JUDGEMENT

Challenging the judgment and decree dated 06.12.2018 passed in MCOP.No.45 of 2016 on the file of the Motor Accidents Claims Tribunal, Rasipuram, the claimant is before this Court.

2. The case of the appellant is that, on 14.11.2015 at about 07.10 pm., when the appellant was traveling as a pillion rider in the Hero Passion Pro two wheeler, bearing Regn.No.TN-28-AT-5959, driven by her husband from 5 Road towards New Bus stand near Joy Allukkas Jewellery shop, as the driver of the unknown vehicle which was proceedings in front of the above said vehicle, applied brake all of a sudden without any signal, the husband of the appellant dashed against the said car, as a result of which, the appellant fell down from the two wheeler and sustained grievous injuries all over the body and was admitted in the hospital. Thereafter, the appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 (in short 'MV Act') claiming a compensation of Rs.10,00,000/-. After contest, the Tribunal, vide impugned decree awarded a compensation of Rs.1,87,345/- and fastened the



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liability as against the 1st respondent/owner of the vehicle on the ground that the policy relating to the vehicle is an Act Only Policy and does not indemnify the pillion rider. Aggrieved with the said order, the present appeal has been filed by the claimants seeking enhancement as also questioning the liability of the insurer.

3. Learned counsel appearing for the appellant submitted that admittedly, the accident occurred on 14.11.2015, due to which, the appellant suffered permanent disability and the nature of the injury sustained by the appellant is *Grade II Open fracture both bone right forearm* and due to the said accident, the appellant is unable to lead her normal life as she led before the accident. He further submitted that absolving the insurance company of its liability to pay the compensation is wholly erroneous as the vehicle is governed by the terms of the policy, which has been entered into between the insurer and the insured. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, the 1st respondent had taken a third party



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liability policy, viz., an Act Only Policy and the appellant herein being a pillion rider cannot claim compensation from the 2nd respondent insurance company as the pillion rider is not covered under the terms of the Act Only Policy. Therefore, the claim petition filed by the appellant under Section 166 of the MV ACT is not maintainable. After considering all the relevant documents, the Tribunal has rightly fastened the liability on the 1st respondent, which does not require any modification. Accordingly, he prays for dismissal of the appeal.

5. Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the 2nd respondent and perused the materials available on record.

6. The major issue that arises for consideration in the present appeal is whether the appellant being a pillion rider 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. The issue which is raised in the present appeal is no longer *res integra*, as the similar issue has already been considered by the Apex Court in the case of ***Oriental Insurance Co. Ltd. - Vs - Sudhakaran K.V. & Ors. (2008 (7) SCC 428)***, wherein, the Apex Court held thus :-

“14. The provisions of the Act and, in particular, Section 147 of the Act were enacted for the purpose of enforcing the principles of social justice. It, however, must be kept confined to a third party risk. A contract of insurance which is not statutory in nature should be construed like any other contract.

15. We have noticed the terms of the contract of insurance. It was entered into for the purpose of covering the third party risk and not the risk of the owner or a pillion rider. An exception in the contract of insurance has been made, i.e., by covering the risk of the driver of the vehicle. The deceased was, indisputably, not the driver of the vehicle.

16. The contract of insurance did not cover the owner of the vehicle, certainly not the pillion rider. The deceased was travelling as a passenger, stricto sensu may not be as a gratuitous passenger as in a given case she may not be a member of the family, a friend or other relative. In the sense of the term which is used in common parlance, she might not be even a passenger.

In view of the terms of the contract of insurance, however, she would not be covered thereby.

18. Yet again in Ghulam Mohammad Dar v. State of J&K and Ors. [(2008) 1 SCC 422], this Court opined that the words



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"injury to any person" as inserted by reason of the 1994 Amendment would only mean a third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. [See also The New India Insurance Company v. Darshana Devi & Ors. 2008 (2) SCALE 432]

19. The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

8. The aforesaid view has been followed by this Court in the case of ***The New Indian Assurance Co. Ltd. Vs. S.Krishnasamy (CMA.No.3567 of 2013 dated 10.12.2014)***, wherein the Division Bench held thus :-

"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,



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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.”

9. Recently, this Court in ***M/s.Iffco Tokio General Insurance Co. Ltd. - Vs - Shajahan (CMA No.4163 of 2019 - Dated - 19.01.2024)***, has discussed the applicability of the Act Only Policy with reference to third parties and in the said context held thus :-

"74. The above decision relied on by the claimant leans more in favour of the insurance company rather than the claimants. From the above, it is very clear that though all the parties other than the first and second party, viz., the insurer and the insured, are deemed to be third parties, however, in respect of policy cover, as held in the aforesaid decision, the same is not guided by Section 147 (1)(b)(i) of the Act, 1988; rather, the same is guided by the terms of the policy, which has been entered into between the insurer and the insured. As held in the aforesaid decision, the requirement to pay would only flow from the wider cover, which the insured has secured beyond the minimum prescribed under Section 147 by paying an additional premium, in which case alone, the insurer would be liable to compensate the occupant of the private vehicle, in case of any claim. But for the payment of additional premium, the liability of the insurer to compensate the occupants of the private vehicle, even if they fall under the definition of "third party" would stand extinguished insofar as the insurer is concerned as no liability has been undertaken by the insurer on behalf of the insured to indemnify the claim of the occupants of a private vehicle as the occupants are not agreed to be covered under the Act Only Policy.



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Therefore, the liability to compensate the occupant injured in any such event will flow not only from the requirements of Section 147, but would be only on the basis of the terms of the policy issued.

75. From the above, it is clear that the occupant of a private vehicle, though would be deemed to be a third party, but in the absence of specific inclusion of the occupant of the private vehicle by the contracting parties by paying additional premium for the purpose of covering the liability of the insured, the liability would not stand transposed on the insurer on behalf of the owner of the vehicle. In fine, additional premium over and above the minimum prescribed should have been paid for indemnifying the claim of a passenger of a private vehicle. Therefore, in respect of an Act Only Policy, which is the minimum prescribed u/s 147, third party would necessarily be taken to mean a person outside the vehicle and would not include the occupant of the private vehicle; however, if additional premium is paid enabling the said cover in the contract of insurance, then the occupant of the vehicle would stand covered under the Third Party Risk. Therefore, beyond the minimum prescription u/s 147 of Act, 1988, a wider policy could be taken for covering the occupant of the private vehicle, in which case the occupant would also fall within the ambit of third party, by paying additional premium as agreed between the first and second party, viz., the insurer and the insured for the purpose of claiming compensation.

76. When the Three Judge Bench of the Supreme Court in Amrit Lal Sood has clearly spelt out the situations in which the insurance company would be liable to indemnify the insured and in respect of an Act Only Policy, and has specifically held that in the absence of a wider cover having been accepted between the contracting parties, the liability of the insurance company would



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be only to the extent of the coverage agreed between the contracting parties, the Division Bench, in Chandrasekaran case (supra), without taking into consideration that the policy in Amrit Lal Sood is a comprehensive policy, had imported the ratio laid down in the said decision erroneously to the case before it and had come to the conclusion that the said decision is squarely applicable even with regard to an Act Only Policy, by holding that the intent of the Legislature is writ large in the omission of clause (ii) of proviso to Section 95 (1)(b) in Section 147 of Act, 1988, notwithstanding the fact that in Amrit Lal Sood, the Apex Court had clearly negated that the occupant of the private vehicle would not be entitled to compensation in the absence of any additional premium being paid. Therefore, with great respect, the interpretation has been erroneously arrived at by the decision of the Division Bench with regard to Act Only Policy by taking cue from the decision in Amrit Lal Sood, though the said case stood on a different footing, viz., which was a case covered by a Comprehensive Policy.

77. Therefore, the mere inclusion of all the persons within the ambit of third party as defined u/s 145 (g) of Act, 1988 would not enure to the benefit of the claimant, who is an occupant of the private vehicle, as the liability to compensate the occupant of the private vehicle for any death or bodily injury will flow not from the requirements of Section 147 but in relation to the terms agreed between the insurance company and the owner of the vehicle.

78. From the above discussion, this Court holds that “any person” as found in Section 147 (1)(b)(i) would fall within the definition of “third party” as defined u/s 145 (g) of Act, 1988 and all persons irrespective of their position, would be deemed to be “third party” but the indemnification of the insurer towards payment of compensation would flow only from Section



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147 (5), which would be based on the terms of the contract entered into between the contracting parties, viz., the insurer and the insured and, therefore, reading Section 147 (1)(b)(i) and 147 (5) together, the occupant of the private vehicle would not be entitled for claiming compensation unless the terms of the policy spells out the intention of the contracting parties towards the occupant, by means of wider coverage under the policy and not otherwise, which alone would have been the intent of the Legislature while enacting the amendment in the year 1988."

10. In view of the ratio laid down in the aforesaid decisions, definitely, the pillion rider 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 pillion rider 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 pillion rider.

11. 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 pillion rider, rightly the Tribunal had absolved the insurance



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company of its liability and fastened the liability on the owner of the vehicle, which cannot be said to be erroneous and, the same deserves to be confirmed.

12. For the reasons aforesaid, the appeal deserves to be dismissed and, accordingly, this appeal is dismissed. It is open to the appellant/claimant to recover the amount of compensation awarded by the Tribunal from the 1st respondent/owner of the vehicle in the manner known to law. There shall be no order as to costs in this appeal.

24.11.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

- 1.The Motor Accidents Claims Tribunal,
Rasipuram.
- 2.The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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