IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM:

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

C.M.A.No.533 of 2020 and
C.M.P.No.3303 of 2020

M/s.The New India Assurance Co.Ltd.,
No.12/1, Kamaraj Road,
No.12/1, Kamaraj Road,
Mahalingapuram,
Pollachi - 2 ...Appellant/2nd Respondent

Vs.

1. Saraswathi
2. Thilagaraj ...Respondents 1 & 2/ Petitioners 1 and 2
3. Balasubramaniam ...3rd Respondent/ 1st Respondent
4. S.P.Manikandan ...4th Respondent/ 3rd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the decree and judgment dated 17th of June, 2019, passed in M.C.O.P.No.430 of 2014, by the Hon'ble Motor Accidents Claims Tribunal, at Dharapuram.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.Ma.Pa.Thangavel for R1 & R2
No Appearance, for R3 and R4

JUDGEMENT

Challenging the decree and judgment dated 17.06.2019, passed in

M.C.O.P.No.430 of 2014, on the file of Motor Accidents Claims Tribunal, Dharapuram, the claimant is before this Court.

2. Though notice was served on respondents 3 and 4, none appeared on their behalf nor any representative of the respondents 3 and 4 was present before this Court.

3. The case of the appellant is that, on 12.01.2014 at about 9:15 pm., when the deceased was traveling as a pillion rider in a motor cycle, bearing Regn.No.TN-37-AT-0407, driven by one Parthasarathi, as the driver of the said vehicle applied sudden brake, the deceased was thrown away from the motor cycle and had fallen down from the vehicle sustaining grievous injuries all over the body. While so, the deceased was admitted in the hospital, but he succumbed to the injuries on the next day i.e.,13.01.2014. Thereafter, the respondents 1 and 2 have filed a petition before the Tribunal claiming a compensation of Rs.10,00,000/-. After contest, the Tribunal, vide impugned decree awarded a compensation of Rs.10,26,000/-. Aggrieved with the said order, the present appeal has been filed by the appellant / insurance company.

4. Learned counsel appearing for the appellant / insurance company

submitted that as per the RC book the vehicle belonged to one S.P.Manikandan, who is the owner of the vehicle had taken a third party liability policy, viz., an Act Only Policy and the deceased being a pillion rider cannot claim compensation from the appellant / insurance company as the pillion rider is not covered under the terms of the Act Only Policy. Therefore, the claim petition filed by the respondents 1 and 2 under Section 166 of the MV ACT is not maintainable. Though all those facts were established before the Tribunal, after contest the Tribunal has fastened the liability on the appellant, which warrants interference of this Court. Accordingly, he prays to allow this appeal.

5. Per contra, the learned counsel appearing for the respondent 1 and 2 / claimants submitted that, the accident occurred on 12.01.2014, due to which, the deceased lost his life. Upon considering the oral and documentary evidences, the Tribunal has passed the award which cannot be interfered with. Accordingly, he prayed for appropriate orders.

6. Heard the learned counsel for the appellant / insurance company and the learned counsel appearing on behalf of the respondents 1 and 2 / claimants

and perused the materials available on record.

7. The major issue that arises for consideration in the present appeal is whether the deceased 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.

8. 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 "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."

9. The Division Bench of the Karnataka High Court in the case of *Dr.* ***S.Jayaram Shetty – Vs – National Insurance Co. Ltd. (2002 SCC OnLine Kar 267****, considering the term "third party" with reference to Act Only Policy held as under:*

"11. The term 'third party' has not been defined exhaustively in the Act. Section

145(g) gives an inclusive definition and simply states that 'third party' will include the Government. That does not however present much difficulty, in understanding the true meaning and import of the term. The term 'third party' must necessarily refer to a party other than those, who are parties to the contract of insurance. For a contract of insurance, the insurer is one party while the policy holder is the other party. Any person or persons other than the said two party or parties would necessarily be referred to as third parties. That is precisely how the expression third party appearing in Chapter XI has to be understood. Considerable support for that view is available from the meaning given to the words "third party risk" in Stroud's Judicial Dictionary, which explains third party risks in the following words.--

"Third party risks (Road Traffic Act, 1930 (Clause 43), Section 35 of the Road Traffic Act, 1972 (Clause 20),Section 143) connotes that the insurer is one party to the contract, that the policy-holder is another party, and that the claims made by others in respect of the negligent use of the car may be naturally described as claims by third parties (Digby v. General Accident Fire and Life Assurance Corporation, 1943 AC 121).

....

13. The issue can be viewed from another angle also.Section 147 enjoins that the policy issued by the authorised insurer should insure the person specified in the policy against any liability which may be incurred by him in respect of death of or bodily injury to any person specified in Sub-section (1)(b)(i) and (ii). <u>The critical expression "against any liability, which may be incurred by him" in Section 147(1)(b)(i)leaves no manner of doubt that the policy of insurance, which the owner obtains from the authorised insurer is meant to insure the owner or the holder of the policy against any liability that he may incur qua third parties whether such liability be on account of death or bodily injury to any</u>

such person or damage to any property owned by him. In terms of Sub-section (1)(b)(ii), the policy must also insure the owner against the death of or bodily injury caused by or arising out of the use of the vehicle if it is a public service vehicle used in a public place. In other words, if no liability arises against the holder of the policy, the same cannot arise against the Insurance Company. That position of law is fairly well-settled by the decision of the Supreme Court in Oriental Insurance Company Limited v. Sunita Rathi and Ors.,. The High Court had in that case while exempting the owner of the vehicle made the insurer liable to pay the compensation. The Court declared that approach to be erroneous and held that liability of the insurer arises only when the liability of the insured has been made out for purposes of indemnifying the insurer under the contract of insurance. To the same effect is the decision of the Supreme Court in Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr.,. The claim had in that case arisen under the old Act. The Court was examining the provisions of Section 95 corresponding to Section 147 of the new Act. It observed.--

> *"The insurance policy is only to cover the liability of a person which he might have incurred in respect of death or bodily injury. The accident to which the owner or the person insuring is liable is to the extent of his liability in respect of death or bodily injury and that liability is covered by the insurance. It is therefore obvious that if the owner has not incurred any liability in respect of death or bodily injury to any person there is no liability and it is not intended to be covered by the insurance. The liability contemplated arises under the law of negligence and under the principle of vicarious liability. The provisions as they stand do not make the owner or the Insurance Company liable for any bodily injury caused to a third party arising out of the use of the vehicle unless the liability can be fastened on him. It is significant to note that under Sub-clause (ii) of Section 95(1)(b)of the Act, the policy of insurance must insure a person against the death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Under Section 95(1)(b), Clause (ii) of the Act the liability of the person*

> *arises when bodily injury to any passenger is caused by or use of the vehicle in a public place. So far as the bodily injury caused to a passenger is concerned it need not be due to any act or liability incurred by the person. It may be noted that the provisions of Section 95 are similar to Section 36(1) of the English Road Traffic Act, 1930, the relevant portion of which is to the effect that a policy of insurance must be policy which insures a person in respect of any liability which may be incurred by him in respect of death or bodily injury to any person caused by or arising out of the use of the vehicle on road. <u>The expression "liability which may be incurred by him" is meant as covering any liability arising out of the use of the vehicle. It will thus be seen that the person must be under a liability and that liability alone is covered by the insurance policy</u>".*
> *(emphasis supplied)*

...

15. <u>That leaves us with the alternative submission made by Mr. Shankar that since the occupants of the private car owned by the appellant were themselves insured against death or personal injury</u>, there is no reason why the owner, who is also one of such occupants at the time of the accident could not be deemed to be similarly covered for payment of compensation. The argument must fail for two reasons. Firstly, because the occupants of a private car are covered in terms of Endorsement 5 to the policy, which reads as under.--

> *"Accidents to unnamed passengers other than the insured and his paid driver or cleaner (private cars only):*
> *In consideration of the payment of an additional premium it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the insured and/or his paid driver, attendant or cleaner and/or a person in the employ of the insured coming within the scope of the Workmen's Compensation Act, 1923, and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting or dismounting from or travelling in the motor car and caused by violent accidental external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in".*

16. It is evident from the above that while passengers travelling in a private car, *are covered against death or bodily injury resulting from the accident involving the vehicle, the insurance cover qua the insured is specifically excluded.* ***The insurance cover provided to the occupants, it is noteworthy, does not flow from the provisions of Section 147 of the Act. It on the contrary flows from the wider cover, which the insured has secured beyond the minimum prescribed under Section 147 by paying an additional premium****. In case the insured obtains such a wider cover under the terms of the policy, the Insurance Company will be liable to undertake the liability.* ***What is however clear is that the liability to compensate the occupant injured in any such event will flow not from the requirements of Section 147, but on the terms of the policy issued to the insurer. The legal position in this connection is no longer res integra having been authoritatively settled by the Supreme Court in Amrit Lal Sood and Anr. v. Smt. Kaushalya Devi Thapar and Ors., where the Court observed****.--*

> *"Section 95 requires a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a statutory policy, the terms of the policy have to be considered to determine the liability of the insurer".*

17. It may be recalled that the insurance cover to occupants travelling in a private car without hire or reward was extended pursuant to the decision of the Supreme Court in Civil Appeal No. 2071 of 1998 stating that the insurers are not liable in respect of the insured's liability for passengers carried in a private vehicle on the ground that Section 95 of the old Act did not require the insurance policy to cover such liability. It was consequent upon the said *decision that the Tariff Advisory Committee had issued circulars amending the existing policies with effect from 25th of March, 1977. The legal position however remains unaltered by the said amendment and extension of the insurance coverage for the occupants remains optional as there is no compulsion under Section 147 of the Act to provide for any such insurance. The decision of a Single Bench of this Court in Shanthabai and Ors. v. Shekappa and Ors., has dealt with the genesis of the extended cover for passengers travelling in private car."*

(Emphasis Supplied)

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, though 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, the Tribunal had erroneously absolved the owner of the

vehicle and fastened the liability on the insurance company, which is per se unsustainable and, the same deserves interference of this Court.

12. For the reasons aforesaid, the appeal deserves to be allowed and, accordingly, this appeal is allowed and the impugned award passed in M.C.O.P.No.430 of 2014 dated 17.06.2019 is set aside. It is open to the respondents 1 and 2 / claimants to recover the amount of compensation awarded by the Tribunal from the owner of the vehicle in the manner known to law. There shall be no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

30.11.2023

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

To

1.The Motor Accidents Claims Tribunal, Dharapuram

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

M.DHANDAPANI, J.

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C.M.A.No.533 of 2020

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