IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.04.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1415 of 2020
and
C.M.P.No.10377 of 2020

The United India Insurance Co. Ltd
No.104-A, Peramanur Main Road
Peramanur, Salem- 636 009.

... Appellant

Vs.

1.Prabhu
2.Kumar

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree dated 03.01.2018 made in MCOP.No.764 of 2015 on the file of the Motor Accident Claims Tribunal (Special Sub Judge-I), Salem.

For Appellant : Mrs.I.Malar
For R1 : Mr.C.Thangaraju
For R2 : No Appearance

JUDGMENT

The appeal is filed challenging the Award and Decree dated 03.01.2018 made in M.C.O.P.No.764 of 2015 on the file of the Motor Accident Claims Tribunal (Special Sub Judge-I), Salem.

2. The appeal is filed challenging the liability of the Insurance Company to pay the compensation to the first respondent.

3. On 19.09.2014, while the claimant was travelling in TATA SUMO car, as a passenger, due to the rash and negligent driving of the driver of the TATA SUMO car, the claimant was thrown out of the car and he fell on the road and was admitted in the Government Hospital, Kovai for treatment for the injuries sustained by him in the accident. The claimant was aged 28 years at the time of the accident and he was earning a sum of Rs.8,000/- per month. He therefore filed the claim petition claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident.

4. The first respondent in the claim petition remained ex-parte and the second respondent/Insurance Company contested the claim petition by filing a counter. The Insurance Company denied the negligence, occupation, age and

income of the deceased and further contended that as the claimant was travelling as a passenger in the car, in the absence of a Policy covering liability to the passengers in the car, the Insurance Company was not liable to pay compensation. As the policy was only a liability policy, the occupant of the car was not covered under it. The Insurance Company therefore prayed for dismissal of the claim petition.

5. Before the Claims Tribunal, the claimant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.8 in support of his case. The respondent examined one witness and marked Ex.R.1 and R.2 and Court document were marked as Ex.C.1 and C.2.

6. The Claims Tribunal, on an assessment of entire evidence on record, allowed the claim petition on its finding, that the policy was a comprehensive policy and that the claimant was a 3rd party. The Claims Tribunal therefore allowed the claim petition and awarded a sum of Rs.4,08,763/- along with 7.5% of interest as compensation and mulcted the liability on the Insurance Company.

7. Aggrieved by the Award and Decree of the Claims Tribunal, the

Insurance Company has filed the above appeal challenging the same.

8. The learned counsel for the Insurance Company submitted that he was not disputing the accident, negligence and quantum of compensation. The only point raised in this appeal is the finding of the Tribunal on liability. The learned counsel submitted that the Tribunal, on an erroneous view that the policy was a comprehensive policy and that the claimant was a 3rd party to the vehicle, mulcted the liability on the Insurance Company. The learned counsel further submitted that the policy was marked as Ex.R.1 and on a perusal of the policy, it would be very clear that the policy was an Act Policy/ liability policy and did not cover liability to occupants in the car. On these grounds, the learned counsel prayed that the appeal may be allowed. In support of her case, the counsel relied on Judgments of Supreme Court and this Court, in the case of *United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Ors.* reported in *2006 (1) TN MAC 36 (SC)* and in the case of *The New Indian Assurance Co. Ltd vs S.Krishnasamy* reported in *2015 (1) TN MAC 19 (DB).*

9. The learned counsel for the claimant, on the other hand, submitted that

the Tribunal has rightly considered the nature of the policy and has passed the Award. The counsel further submitted that the claimant should be considered as 3rd party to the vehicle and therefore, the Insurance Company cannot wriggle out of its liability. The learned counsel therefore submitted that there is no infirmity, impropriety or illegality in the Award of the Tribunal and therefore, the same deserves to be confirmed.

10. I have heard both the learned counsel for the appellant and the learned counsel for the respondents and have perused the materials placed on record.

11. The short point that arises in this appeal is the liability of the Insurance Company to compensate the claimant for the injuries sustained by him in the accident. The accident is not disputed and the fact remains that the claimant was travelling as a passenger in the insured car at the time of the accident.

12. The Insurance Company has marked Ex.R.1, the copy of the policy. Upon perusal of the policy, it is seen that the policy is only an "Act only policy". In the schedule of premium in the policy, it is stated as follows:

SCHEDULE OF PREMIUM (IN Rs.)

B.BASIC - TP	Rs.4,109.00
Total	Rs.4,109.00
Add:	
LL to Paid Driver IMT 28	Rs.50.00
Sub Total (Additions)	Rs.50.00
Gross TP (B)	Rs.4,159.00
Total Liability Premium	Rs.4,159.00

13. It is therefore seen that the liability is undertaken only for 3rd party claims and there is no coverage for the passenger/ occupants of the car. The learned counsel for the Insurance Company is justified in her submission that in the absence of payment of additional premium seeking coverage for passengers/ occupants of the car, the Insurance Company cannot be made liable. The Division bench of this Court in the case of *The New Indian Assurance Co. Ltd., Vs. S.Krishnasamy and others* reported in *2015 (1) TN MAC 19 (DB)*, on the consideration of the facts of the case and on interpretation of "Act policy", held 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 rulings cited on the side of the respondents 1 to 5/ claimants are not applicable to the facts of the present case."

14. In the light of the Hon'ble Division Bench Judgment and in the light of the fact that the policy in question is also an "Act only policy", the Insurance Company is not liable to pay the compensation. The Hon'ble Division Bench in the above referred Judgment has also held that, once it is found that the Insurance Company was not liable, then there cannot be a direction to pay and recover also.

15. I am therefore of the view that the Award and Decree of the Motor Accidents Claims Tribunal deserves to be set aside and the same is set aside. The appeal is accordingly allowed.

16. The learned counsel for the Insurance Company submits that 50% of the Award amount was deposited and she seeks permission of the Court to withdraw the same. The Insurance Company is permitted to withdraw the 50% of the amount already deposited by them. It is made clear that the present Judgment shall not come in the way of the claimant to recover the amount from the owner of the vehicle. The appeal is accordingly allowed. There shall be no order as to costs. Consequently connected C.M.P is closed.

18.04.2023

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

To

1.The Special Sub-Judge I,
Motor Accidents Claims Tribunal,
Salem.

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

N.MALA.J.,

dsn

C.M.A.No.1415 of 2020

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