IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4174 of 2019
and
C.M.P.No.23582 of 2019

The Oriental Insurance Company Limited,
Divya Towers,
Shevapet Main Road,
Salem. ... Appellant / 2nd Respondent

Vs.

1. Kavitha
W/o. Late Rajasekaran

2. Minor Bharanidharan
S/o.Late Rajasekaran

3. Minor Kavyadharshini
D/o.Late Rajasekaran

4. Pappathi @ Manonmani
W/o.Aasaithambi ... Respondents 1 - 4 / Petitioners 1 - 4

5. Subramaniam Natraj ... 5th Respondent / 1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.03.2015 made in M.C.O.P.No.199 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Rasipuram.

For Appellant	:	Mr.S.Arun Kumar
For Respondents	:	No appearance

J U D G M E N T

The appellant is the Insurance Company. Challenging the award dated 17.03.2015 in M.C.O.P.No.199 of 2015, the appellant / Insurance Company is before this Court.

2. On 17.03.2010 at around 4.30 pm, the deceased Rajasekar was travelling along with three others in a car bearing Registration No.MH-05-H-4971 owned by the fifth respondent herein. When the car reached the place near Nellikuthiparai, suddenly front tire got burst, as a result of which, the deceased Rajasekar was sustained severe head injury and enroute to the hospital, he died. The car was driven by one Kannan which is alleged that

the car was purchased by the said Kannan from the fifth respondent, however the insurance papers and the other documents were standing in the name of the fifth respondent.

3. Claiming compensation of Rs.10,00,000/- for the death of the deceased, the dependants of the deceased, i.e., the claimants have filed M.C.O.P.No.199 of 2010 on the file of the Motor Accidents Claims Tribunal, learned Sub Judge, Rasipuram. The Tribunal on consideration of the materials placed before this Court came to the conclusion that there was no violation of policy conditions and that the driver of the vehicle was possessing valid driving license at the time of the accident and hence, the appellant / Insurance Company was liable to pay the compensation of a sum of Rs.9,61,160/-. Challenging the said award, the present appeal has been filed by the appellant / Insurance Company.

4. The learned counsel for the appellant / Insurance Company challenges the award on the ground that the deceased was an unauthorised

passenger in the private car and the owner of the car had violated the policy conditions. Admittedly the car, which was involved in the accident, was insured under the Act Liability (Liability only / Statutory Policy) and no premium was paid for gratuitous passengers in the car and hence, the Tribunal erred in fixing the liability on the appellant / Insurance Company. Moreover the Tribunal had not considered that the income of the deceased was not proved by any documentary evidence, thereby the award itself is liable to be set aside.

5. The learned counsel for the appellant / Insurance Company further submitted that the deceased was an occupant of the car which was owned by the said Kannan from the fifth respondent and since the deceased was only the occupant and that the policy was only an act policy, the appellant / Insurance Company is not liable to pay any compensation to the occupant of the car. However, the Tribunal without considering the question on that aspect had erroneously came to the conclusion that the appellant / Insurance Company is liable to pay the compensation.

6. Though notice have been served upon the respondents, none appeared on behalf of them.

7. The issue involved in the present appeal is squarely covered by the decision of the Division Bench of this Court in the case of ***New Indian Assurance Company Ltd. vs. S.Krishnasamy*** in ***C.M.A.No.3567 of 2013***, wherein the Division Bench has held as follows:

> *"**1**7.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:-*
>
> > *"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."*

8. In view of the judgment cited above, this Court is 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 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 appellant / Insurance Company is not liable to pay any compensation to the claimants / dependents of the deceased and that 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.

9. For the aforestated reason, the Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal in M.C.O.P.No.199 of 2010 dated 17.03.2015 is set aside. This Court by order dated 07.11.2019 granted

interim stay on condition that the appellant / Insurance Company shall deposit 50% of the compensation amount, as awarded by the Tribunal, along with interest and costs, to the credit of M.C.O.P.No.199 of 2010, now since the present Civil Miscellaneous Appeal is allowed and the award is set aside, the appellant / Insurance Company is entitled to withdraw the amount deposited by them. No costs. Consequently, connected miscellaneous petition is closed.

03.10.2023

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

1. The Motor Accidents Claims Tribunal,
   Sub Judge,
   Rasipuram.

2. The Section Officer,
   V.R. Section,

High Court,
Chennai.

M.DHANDAPANI, J.

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