IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4454 of 2019

Clara ... Appellant/Petitioner

Vs

1.Joh Peter

2.The Divisional Manager,
I.C.I.C.I Lombard General Insurance Company Limited,
Chottabai Center,
140, 2nd & 3rd Floor,
Nungambakkam High Road,
Nungambakkam, Chennai. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree passed by the Motor Accidents Claims Tribunal, Principal Sub Court, Tiruvannamalai dated 21.04.2014 made in M.C.O.P.No.390/2011.

For Appellant ... M/s.B.Jawahar

For Respondents ... Notice not ready for R1
... Mr.K.Poomalar for R2

JUDGMENT

Aggrieved by the impugned award dated 21.04.2014 passed by the Motor Accident Claims Tribunal, Principal Sub Court, Tiruvannamalai in M.C.O.P.No.390 of 2011, the present appeal has been filed by the claimant/appellant questioning the liability of the insurer.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

The Appellant herein is the mother of the deceased Pathiaraj @ Pathiyanathan. On 18.04.2011, at about 1.15 pm, when the deceased was riding an unregistered Indica Vista Car bearing Engine No.100A 2000-0044105 and Chasis No. MAT 611452 IPN 90570 on Tiruvannamalai to Tirukoilur Road near Su Valavetti village along with others who travelled as passengers in the said car, a cattle suddenly crossed the road and in order to avoid dashing the cattle, a sudden brake was applied by the deceased as a result of which, the car dashed against the tamarind tree thereby the deceased sustained fatal injuries all over the body and died on spot while others sustained grievous injuries. Aggrieved by the death of her son, in the said accident, the claimant has filed a claim petition before the Motor Accidents Claims Tribunal, Principal Sub Court, Tiruvannamalai, claiming compensation of Rs.10,00,000/- in M.C.O.P.390 of 2011. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition and awarded compensation of Rs.11,62,000/- and fastened the liability as against the 1st respondent/owner of the vehicle. Challenging the said order dated 21.04.2014, the appellant/claimant has filed this Appeal before this Court questioning the order negating the liability of the insurer.

3. Learned counsel appearing for the Appellant/Petitioner submitted that though the 1st respondent is the owner of the offending car, the 2nd respondent being the insurer of the said vehicle is jointly and severally liable to pay the compensation to the petitioner so long as the policy is valid.

However, the Tribunal without properly adjudicating the issue has fastened the liability wholly against the 1st respondent which is not sustainable. Accordingly, he prayed for allowing the appeal.

4. Per contra, learned counsel appearing for the 2nd respondent/insurance company submitted that at the time of accident the deceased/driver of the vehicle was not in possession of a valid driving licence, which is in violation of the policy conditions and that the negligence on the part of the driver alone is the cause for the said accident. That apart, the deceased is not a third party within the meaning of an Act Only Policy and no separate premium has been paid to cover the owner of the car, as the deceased was acting in the place of the owner of the car, the insurance company is not liable to pay any compensation to the claimant. Accordingly, he prayed for dismissal of this Appeal.

5. The accident is not disputed and so also the deceased driving the car is not disputed. Equally it is not in dispute that the deceased is not holding a valid driving licence. The vehicle was covered only under an Act Only Policy

is not disputed. However, the whole case of the claimant revolves around the liability of the insurer to pay the compensation, as according to the claimant, the deceased would fall within the meaning of "third party" and would be entitled to seek compensation under the Act Only Policy.

6. In this regard, it is to be noted that the 1st respondent, who is the owner of the vehicle is the brother of the deceased. The deceased, had stepped into the shoes of his brother, viz., the 1st respondent, who is the owner of the car and had taken the car, that too without holding a valid driving licence. Therefore, to that extent, the deceased would not fall within the meaning of "third party".

7. Even for the sake of argument, if it is to be inferred that the deceased is a "third party" as the Motor Vehicles Act is a benevolent legislation which is enacted for the welfare of the persons, who meet with the accident, be it fatal or injury, the terms of the contract of policy would alone be the guiding factor in deciding whether the claimant would be entitled to any compensation at the hands of the insurance company.

8. In the case on hand, the policy, according to the insurance company is an Act Only Policy, which is not disputed by the claimant or the 1st respondent. In case of an Act Only Policy, the liability of the insurance company would be guided by the terms of the contract.

9. 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."

10. 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, 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."*

11. 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. 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 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 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 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."

12. 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.

13. In the case on hand, the policy of insurance being an Act Only Policy and no separate premium had been paid to cover the passenger in the car, even if it is presumed that the deceased was only a passenger in the car, though he had driven the vehicle at the instance of the owner, no separate premium having been paid under the Act Only Policy, the Tribunal had rightly concluded that no liability can be fastened on the insurer to indemnify the claimant and the liability would fully stand transferred to the shoulder of the owner of the vehicle, viz., the 1st respondent and, accordingly, had directed the

1st respondent to pay the compensation to the claimant. The said finding arrived at by the Tribunal, on the facts and circumstances of the case, as also on the legal side is just and reasonable and no interference is warranted with the same.

14. For the reasons aforesaid, the civil miscellaneous appeal is dismissed confirming the order and decree passed by the Tribunal in M.C.O.P.No.390 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tiruvannamalai. There shall be no order as to costs in this Appeal.

30.11.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
NHS

To
1.The Motor Accident Claims Tribunal
Principal District Judge,
Tiruvannamlai.
2.The Section Officer,
V.R. Section,
High Court, Madras.

M.DHANDAPANI, J

NHS

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