IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM :

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

C.M.A.No.2242 of 2018
and
C.M.P.No.17215 of 2018

The Oriental Insurance Co. Ltd.,
The Branch Office,
No.12, Katpadi Road,
Gudiyatham. ... Appellant

Vs.

1.V.Magalingam
2.V.G.Senthil Kumar
3.S.S.Durai Samy ... Respondents
[R3 exparte in Lower Court and hence notice may be dispensed with]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree in M.C.O.P.No.69 of 2007 dated 30.10.2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Gudiyatham at Vellore District.

For Appellant : Mr.E.Rajadurai
for M/s.M.B.Gopalan

For Respondents : Not Ready in Notice [R1 & R2]
Exparte [R3]

JUDGEMENT

Aggrieved by the award passed by the Motor Accidents Claims Tribunal, Subordinate Court, Gudiyatham at Vellore District in M.C.O.P.No.69 of 2007, dated 30.10.2010, the insurance company has filed the present appeal.

2. The case of the petitioner is that, on 06.12.2006 at mid-night, when the petitioner was traveling from Kancheepuram with his relatives in a Tata Sumo bearing Regn.No.TN-09-F-7176, which belongs to the first respondent, being driven by its driver in a rash and negligent manner and hit against a stationed lorry bearing Regn.No.TN-28-H-0934, which was parked in the middle of the road without using any parking light. Due to the impact of the said accident, the petitioner sustained grievous injuries and he had succumbed to death on the spot. Hence, the petitioner/claimant filed a claim petition before the Tribunal claiming a sum of Rs.50,000/- as compensation.

3. Before the Tribunal, the claimant examined six witnesses viz., P.W.1 to P.W.6 and marked 19 documents viz., Ex.P.1 to Ex.P.19. On the side of the respondents, they have examined two witnesses viz., R.W.1 and R.W.2 and marked 4 documents viz., Ex.R.1 to Ex.R.4. After adjudication, the Tribunal by its award dated 30.10.2010 awarded compensation in a sum

of Rs.35,000/- with an interest of 7.5% p.a. Aggrieved by the same, the insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant submitted that the above said accident happened solely due to the rash and negligent driving of the driver of the 3rd respondent vehicle, for which, the appellant/insurer of the vehicle cannot be made liable. Further, the 3rd respondent/owner of the vehicle had taken a third party liability policy, viz., an Act Only Policy and the 1st respondent herein being one among the occupants of the vehicle in question cannot claim compensation from the appellant/insurance company as the occupants are not covered under the terms of the Act Only Policy and no separate premium had been paid by the 3rd respondent/owner of the vehicle for covering the risk of the occupants of the vehicle. Therefore, the claim petition filed by the 1st respondent under Section 166 of the MV Act itself is not maintainable. While so, without considering the above said fact, the Tribunal had erroneously fastened the liability on the appellant/insurance company and the owner of the vehicle, which is not sustainable. He further relied upon the decision of the Hon'ble Division Bench of this Court in the case of ***New India Assurance Co. Ltd., Vs.***

S.Krishnasamy in ***C.M.A.No.3567 of 2013*** dated ***10.12.2014*** reported in ***2015 (1) TN MAC 19 (DB)*** to hold that, *the occupants of the private car cannot be considered as "Third party" and they are not entitled to claim compensation as against the insurer in case of non-payment of separate premium for covering the risk of the occupants of the vehicle.* Accordingly, he prayed for appropriate orders.

5. Heard the learned counsel appearing for the appellant and also perused the materials available on record.

6. The major issue that arises for consideration in the present appeal is whether the 1^{st} respondent being one of the occupant of the private car 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. As rightly pointed out by the learned counsel for the appellant/insurance company, the issue which is raised in the present appeal is no longer *res integra,* as the similar issue has already been considered by

the Hon'ble Division Bench of this Court in the case of ***New India Assurance Co. Ltd., Vs. S.Krishnasamy*** in ***C.M.A.No.3567 of 2013*** dated ***10.12.2014*** reported in ***2015 (1) TN MAC 19 (DB)***, wherein the Division Bench of this Court held thus:-

> *"17. 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:-*
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> > *"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.

19. Hence, we are of the considered view that since the Act policy did not cover the risk, the Insurance Company is not liable to pay any compensation to the claimants/dependents of the deceased and 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."

8. In view of the ratio laid down in the aforesaid decisions, definitely, the occupant of the private car 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 occupant of the car 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.

9. 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 the occupant, the Tribunal ought to have absolved the insurance company of its liability and should have fastened the liability on the 3rd respondent/owner of the vehicle, instead of which, the Tribunal had directed the insurance company and the owner of the vehicle to pay the compensation, which is wholly erroneous and, the same deserves to be set aside.

10. For the reasons aforesaid, the Civil Miscellaneous Appeal stands allowed and the impugned judgment and decree dated 30.10.2010 made in M.C.O.P.No.69 of 2007 is set aside. The appellant/insurance company is entitled to withdraw the award amount, if any already deposited by them before the Tribunal. Further, the 1st respondent/claimant is at liberty to workout his remedy as against the 3rd respondent/owner of the vehicle in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

29.11.2023

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

1.The Motor Accidents Claims Tribunal,
Subordinate Court,
Gudiyatham, Vellore District.

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

M.DHANDAPANI, J.,

sp

C.M.A.No.2242 of 2018

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