BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.06.2023

PRONOUNCED ON : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1200 of 2013
and
MP(MD).No.3 of 2013

M/s.National Insurance Company Limited
Branch II, Thoothukudi
Chidambaranar District 628 001 ... Appellant

vs.

1.Saravanan

2.Malathi

3.Pachamalai

4.Minor Vinayagan

5.Minor Rajathi

6.Minor Karthik

7.Minor Muruga Lakshmi

8.C.Jeyaveerapandian

9.G.Balasubramanian

10.M/s.United India Insurance Company Ltd.,
Branch Office, 67
Trichy Main Road
Salem 636 001 ...Respondents

(Minor respondents 4 to 7 represented through their mother and guardian 3rd respondent herein.

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order and decree dated 08.11.2008 passed in M.A.C.O.P.No.259 of 2003 on the file of the Motor Accident Claims Tribunal, Principal District Court, Thoothukudi to allow this appeal with cost.

For Appellant	: Mr.J.S.Murali
For R1 to R3	: Mr.G.Thalaimutharasu
For R8	:Mr.Rajiv Rufus
For R9	: No appearance
For R10	: Mr.A.S.Mathialagan

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Thoothukudi in MCOP.No.259 of 2003 primarily on the ground of liability.

2.According to the claimants, the deceased Thangaraj was an occupant of an Ambassador Car owned by the first respondent in the claim petition and insured with the second respondent. The lorry belonging to the third respondent and insured with the fourth respondent was driven in a rash and negligent manner and dashed against the Ambassador Car in which the deceased Thangaraj had sustained grievous injuries and later passed away. According to the claim petitioners, the driver of both the vehicles had equally contributed to the said accident. The claimants have prayed for a sum of Rs.7,00,000/- as compensation.

3.The insurance company of the Ambassador Car had filed a counter contending that the accident has happened solely due to the rash and negligent driving on the part of the driver of the lorry. In fact, the driver of the lorry was charge sheeted for the said accident and therefore, they are not liable to pay any compensation.

4.The Tribunal after considering the oral and documentary evidence arrived at a finding that the accident has taken place due to the rash and negligent driving on the part of the driver of both the vehicles. The Tribunal proceeded to fix 50% liability on both the vehicles. The Tribunal further fixed the compensation at Rs.3,00,000/-.

5.The award of the Tribunal is under challenge by the insurance company of the Ambassador Car primarily on the ground that the policy of the Ambassador Car is a Act Only Policy. The deceased Thangaraj was an occupant of the Ambassador Car and therefore, he is not covered under the policy. Hence, the Tribunal was not right in mulcting the liability upon the insurance company of the Ambassador Car also. Hence, he prayed for exonerating the insurance company as far as 50% of the liability is concerned.

6.Per contra, the learned counsel appearing for the 8th respondent in the appeal who is the owner of the Ambassador Car had relied upon the judgment of the ***Hon'ble High Court of Sikkim in MAC.APP.No.06 of 2021 (Suresh Khati Vs. Santosh Chetry @Santosh Chettri and others)*** dated 12.06.2023 and contended that any exclusion clause should be strictly construed in accordance with the statutorily permissible extent. As per Section 147 of the Motor Vehicles Act, the insurance company is liable to indemnify the owner of the offending vehicle and to satisfy the award. The Insurance Company cannot seek exclusion from its liability by contending that it is an Act Only Policy and not a package policy. Hence, he prayed for dismissal of the appeal.

7.I have considered the submissions made on either side and perused the materials available on record.

8.The Tribunal has passed an award holding that the owner and the insurance company of the Ambassador Car as well as the lorry are jointly and severally liable to pay the compensation. Neither the lorry owner nor the insurer of the lorry have challenged 50% of the liability fastened upon them. The owner of the Ambassador Car has also not challenged the award passed against him by the Tribunal holding him liable to satisfy the award. The present appeal filed by the Insurance Company only challenging the indemnification of the owner of the Ambassador Car on the ground that it is a liability only policy. Therefore, the award as against the owner of the Ambassador Car, owner and the insurer of the lorry have become final.

9.The issue now that arises for consideration is whether the insurance company is liable to indemnify the owner of the Ambassador Car or not. According to the learned counsel for the insurance company, it is an Act Only Policy and it does not cover the occupants of the private car, but the learned counsel appearing for the 8th respondent who is the owner of the Ambassador Car had contended that such type of exclusion is not in the insurance policy so as to exclude an occupant of the private car. Even assuming such an exclusion is available, in view of the statutory provision of the Motor Vehicles Act, the same has to be interpreted only in favour of the claimants. Therefore, the insurance company cannot be exonerated from the liability by taking hyper technical view relating to the coverage of the policy with regard to the occupants of the private car.

10.The Hon'ble Supreme Court in a judgement reported in ***2008 (7) SCC 428 (Oriental Insurance Company Ltd., Vs. Sudhakaran K.V. and others)*** has held that a pillion rider in a two wheeler is not a third party and he is not covered by an Act Policy. The Hon'ble Supreme Court had proceeded to hold that the insurance company is not liable to pay the compensation. The Hon'ble Supreme Court in a judgement reported in ***2006 (4) SCC 404 (United India Insurance Co.Ltd. Vs. Tilak Singh and others)*** has categorically held that the policy being a statutory policy, does not cover the risk towards a pillion rider. The Hon'ble Division Bench of our High Court in a judgement reported in ***2015 (1) TN MAC 19 (DB) (New India Assurance Co.Ltd. and another Vs. S.Krishnasamy and others)*** has categorically held that as far as the Act Only Policy in relation to a private car is concerned, the occupant would not come under the category of a third party. Therefore, the occupants are not covered under the said policy. When there is no coverage, the question of directing the insurer to pay and recover would not arise and only the owner of the private car should be held liable.

11.The Judgments of the Hon'ble Supreme Court and the Division Bench of our High Court cited supra, will clearly indicate that the occupants of a private car are not covered by an Act Only Policy and therefore, even an award of pay and recovery cannot be passed and the owner alone has to be held liable.

12.In view of the categorical pronouncements, I am not in agreement with the submission made by the learned counsel appearing for the owner of the Ambassador Car.

13.The Tribunal has not properly appreciated the fact that the insurance policy is an Act Only Policy and it does not cover the occupants of the private car. Admittedly, the deceased was an occupant of the private car. Therefore, the Tribunal was not right in mulcting the liability upon the appellant/insurance company also. The award of the Tribunal is set aside to the extent that it has mulcted the liability upon the appellant/ insurance company. However, 8th respondent herein namely the owner of the Ambassador Car would be liable for payment of the said compensation.

14.In view of the above said deliberations, this Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is set aside to the effect that the appellant/insurance company is exonerated from the liability to pay the compensation. In other respects, the award of the Tribunal is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

30.06.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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1. The Motor Accident Claims Tribunal,
/Principal District Court, Thoothukudi

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgement made in
C.M.A(MD)No.1200 of 2013
and
MP(MD).No.3 of 2013

30.06.2023