BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.12.2022

Pronounced on : 25.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.155 of 2010

The Oriental Insurance Company Limited,
represented by its Branch Manager,
H.P.O.Junction,
Nagercoil. ... Appellant/Respondent No.2

Vs.

1.N.Saraswathi

2.P.Ramachandran

3.P.Jeyachandran

4.P.Jeyabalan ... Respondent Nos.1 to 4/ Petitioners

5.D.Narayana Navamani ... 5th Respondent/1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 17.10.2008 and made in M.C.O.P.No.10 of 2006 on the file of the Motor Accident Claims Tribunal, District Judge, Kanyakumari at Nagercoil.

For Appellant : Mr.C.Jawahar Ravindran

For R1 : Mr.T.Lajapathi Roy

For R2 - R5 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in M.C.O.P.No.10 of 2006, dated 17.10.2008 on the file of the Motor Accident Claims Tribunal / District Judge, Kanyakumari at Nagercoil. The appellant is the second respondent. The respondents 1 to 4 are the claimants 1 to 4. The 5th respondent is the first respondent in the claim petition.

2. A Brief substance of the claim petition is as follows:

On 22.10.2002 at about 10.00 p.m., when the deceased Pandiyan Nadar was travelling as a pillion rider in a Scooter, bearing Registration No.TN-3859, from Suchindrum towards Nagercoil in National High way, the rider of the vehicle / first respondent drove the vehicle in a rash and negligent manner. While so, a cyclist came across the road, the first respondent applied sudden brake. Due to that impact, the deceased fell down on the road and he sustained multiple injuries. He was taken to Suyambulingam Hospital and then he was admitted in Veerabathran Hospital at Rajakkamangalam.

Subsequently, he was admitted in Thanu Hospital, Kottar and he died on 03.11.2002. The deceased was working as a load man. The petitioners are his dependants and they pray a sum of Rs.5,00,000/- as compensation.

3. A Brief substance of the counter filed by the second respondent is as follows:

The manner of accident as stated by the petitioner is not correct. The accident has happened due to the negligence of the deceased while crossing the road. There was no damage to the vehicle. Since the policy is only an Act policy, the respondent is not liable to pay compensation. The petitioners 2 to 4 have attained majority and they were not depending on the income of the deceased. The interest, claimed is excessive.

4. Three witnesses (3) were examined and nine (9) documents were marked on the side of the petitioner. One witnesses (1) was examined and two (2) documents were marked on the side of the respondents. The Tribunal has awarded a sum of Rs.2,20,500/- as compensation, to be paid by the respondents.

5. Against the order, the appellant has preferred this appeal on the following grounds:

The Tribunal has failed to note that the policy is an 'Act only policy' and that there is no coverage for pillion rider travelling in the vehicle. The Tribunal is wrong in fastening the liability on the appellant on the ground that the pillion rider is also a third party. The Tribunal is wrong in fixing the monthly income of the deceased as Rs.3,000/-. The Tribunal is wrong in applying multiplier '8' and is wrong in awarding interest at the rate of 9%. The award is excessive.

6. On the side of the appellant, it is stated that the policy is an 'Act only policy' and that there is no coverage for a pillion rider travelling in the vehicle. No extra premium was paid for the pillion rider. The officials of the appellant was examined as RW1 and he filed a report Ex.R2. A policy copy was marked as Ex.R1. It is stated that the pillion rider is not a third party and that the appellant/ Insurance Company is not liable to pay compensation.

7. A judgment of Supreme Court of India in the case of **United India Insurance Co.Ltd., vs. Tilak Singh and Others** reported in **2006(1) TN MAC 36** is cited, wherein it is held as follows:-

> *"Pillion Rider – Not covered by Insurance Police by paying additional premium – Gratuitous passenger - Insurance Policy being statutory policy not covering risk of death/injury to gratuitous passenger – Insurer owed no liability towards pillion rider – Insurer liable to pay compensation."*

8. On the side of the claimant, it is stated that it is not correct to state that an 'Act only' does not cover the pillion rider. To substantiate the claim of the claimant, a judgment of the High Court of **Andhra Pradesh at Hyderabad** in the case of **New India Assurance Co.Ltd., vs. R.R.Usharani and Others** reported in **2002 SCC Online AP 1149,** is cited, wherein, it is held as follows:-

> *"10.In Satpal Singh's case, 2000 ACJ 1 (SC), the Supreme Court has made it clear that 'any person' had a wide amplitude and it covers all the persons travelling in a vehicle. The Supreme Court has clarified that the amendment has no relation to the compensation as section 95 of the old Act and section 147 of the new Act travel in the same direction. The only distinction which is brought out in the amendment is, apart eyes of law; with reference to the facts of the present case, it makes no*

> *difference. Admittedly, in the instant case, the pillion rider died in the accident and the claim is laid by the legal representatives of the deceased. While dealing with interpretation of a beneficial legislation it held that 'any person' means and includes all persons travelling in the vehicles may be fare paid or gratuitous. Further, the word 'vehicle' occurring in the said provision cannot be assigned restricted meaning unless a particular vehicle is specifically excluded by a statutory provision. It is not in dispute that two-wheeler (motor cycle) is permitted to carry two persons including the driver, we find no reason to exclude the pillion rider. The judgment of Karnataka High Court in Oriental Insurance Co.Ltd., v Minaxi, 2000 ACJ 385 (Karnataka), fully supported this view".*

9. On the side of the claimants, it is stated that if at all there is any policy violation, the Insurance Company may be directed to pay the amount at the first instance and may be permitted to recover the same from the owner of the vehicle.

10. A judgment of this Court in the case of **the Manager, New India Assurance Company Limited, Arni vs. R.Senthamarai and others** reported in **2011 (2) TN MAC 625**, is cited, wherein it is held as follows:-

> *"Policy not being a Comprehensive Policy, but only Act Policy and key term in Policy being "including occupants carried in car provided such occupants are not carried for hire or reward", Insurer, held, not liable – Breach of*

Policy condition – Principle of pay and recover applicable – Principle based on judicial discretion that Claimants should not suffer as liability is inter se dispute between Insurer and Insured – Insurer, accordingly, directed to pay award amount and to recover same from owner of vehicle by filing Execution Petition".

11. A similar judgment of this Court in the case of **United Insurance Company Ltd., vs. Vittal Thevar and Another** reported in **(2018) 4 TAC 635,** is also cited.

12. A copy of the First Information Report was marked as Ex.P1. A copy of Rough Sketch was marked as Ex.P3 and the copy of Observation Mahazar was marked as Ex.P6. PW2 was examined as an eye witness. On the basis of PW2 and on the basis of Ex.P1, Ex.P3 to Ex.P6, the Tribunal fixed the responsibility on the rider of the two wheeler, which is reasonable.

13. RW1 has deposed that the policy was an Act only policy. The deceased Pandiyan Nadar was travelling in the two wheeler, only as a pillion rider and no premium was paid for a pillion rider. A policy copy was marked as Ex.P1. The Investigation Report was marked as Ex.R2. The policy

mentioned in the judgment reported in **2011 (2) TN MAC 625 (cited above)**, was a Comprehensive Policy, whereas Ex.R1 is an Act only policy. Hence, the judgment cited on the side of the respondent, is not applicable to the present case.

14. In the judgment reported in **(2018) 4 TAC 635**, this Court has ordered for pay and recover on the ground that the Insurance Company has failed to plead their case properly. Hence, this judgment is not applicable to the present case.

15. As per the judgment reported in **2002 SCC Online AP 1149**, is cited on the side of the appellant, the law is well settled. The pillion rider is not covered by the "Act only policy". Hence, it is decided that the appellant is to be exonerated of the liability.

16. On the side of the appellant, it is stated that the deceased was an old man and he was depending on the others and the Tribunal is wrong in fixing Rs.3,000/- pm., as income without any evidence.

17. A wage certificate was marked as Ex.P8. PW3 has deposed that the deceased was earning Rs.175/- per day excluding Sundays. RW1 has filed a Investigation Report - Ex.R2, wherein it is stated that the deceased was earning a sum of Rs.2,500/- per month. The Tribunal has fixed the monthly income as Rs.3,000/-. The income fixed by the Tribunal is reasonable. After deducting 1/3rd for his own expenses of the deceased and after applying multiplier '8', the loss of income was calculated as Rs.1,92,000/-. It is decided that the assessment of loss of income done by the Tribunal is reasonable.

18. The Tribunal has awarded Rs.5,000/- towards loss of consortium, Rs.5,000/- towards loss of love and affection, Rs.5,000/- towards loss of estate and Rs.2,000/- towards funeral expenses, which are all reasonable. The Tribunal has awarded Rs.5,000/- towards pain and sufferings, which is not reasonable. The petitioners being the dependants cannot get compensation for the pain and sufferings suffered by the deceased. Hence, the award is modified as follows:

Loss of Income	-	Rs.	1,92,000/-
Loss of Consortium	-	Rs.	5,000/-
Loss of Love and Affection	-	Rs.	5,000/-
Loss of Estate	-	Rs.	5,000/-
Medical Expenses	-	Rs.	6,500/-
Funeral Expenses	-	Rs.	2,000/-
Total	-	Rs.	2,15,500/-

19. It is seen that the Tribunal has fixed the rate of interest at 9% p.a. which is excessive. The claimants are entitled to interest only at the rate of 7.5%.

20. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs.

(i) The insurance company is exonerated

(ii) The owner of the vehicle is liable to pay the compensation with accrued interest and cost

(iii) The Appellant / Insurance Company is permitted to get refund of the amount, if any, is paid by them

(iv) The quantum of compensation awarded by the Tribunal is reduced from Rs.2,20,500/- to Rs.2,15,500/- (Rupees Two lakhs Fifteen Thousand Five Hundred Only) which shall carry interest at the rate of 7.5% per annum.

(v) The fifth respondent herein / the owner of the vehicle is directed to deposit the entire compensation of Rs.2,15,500/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with costs to the credit of M.C.O.P.No.10 of 2006 on the file of the Motor Accident Claims Tribunal / District Judge, Kanyakumari at Nagercoil, within a period of eight weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made by the fifth respondent / the owner of the vehicle, the first respondent herein/ first claimant - wife of the deceased is permitted to withdraw the entire award amount of Rs.2,15,500/- (Rupees Two lakhs Fifteen Thousand Five Hundred Only) with proportionate interest and costs.

(vii) The claimants 2 to 4 are not entitled to any share in the compensation.

25.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
vsd

R.THARANI, J.

vsd

To

1.The Motor Accident Claims Tribunal,
District Judge,
Kanyakumari at Nagercoil.

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

Pre - Delivery Judgment made in
C.M.A(MD)No.155 of 2010

25.04.2023