BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.09.2023

Delivered on : 22.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.543 of 2019

The Manager,
National Insurance Company Limited,
37 C, S.N.High Road,
Tirunelveli Junction,
Tirunelveli 627 001. : Appellant/2nd Respondent

Vs.

1.P.A.Suresh Chandra Sekar

2.Mc.Neil S.Ivan

3.Edberg S.Eben : Respondents/Petitioners

4.Rajan Babu : Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 07.02.2019 made in M.C.O.P.No.15 of 2015 on the file of the Motor Accidents Claims Tribunal/II Additional Sub-Judge, Nagercoil.

For Appellant : Mr.P.Malini

For Respondents : Mr.D.Saravanan, for R1 to R3.

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.15 of 2015, dated 07.02.2019, on the file of the Motor Accidents Claims Tribunal/II Additional Sub-Judge, Nagercoil.

2. The appellant/insurer, who was made liable to pay compensation of Rs.5,84,800/- with interest at 7.5% per annum to the respondents 1 to 3/claimants for the death of Joylet Jancy, consequent to an accident occurred on 18.02.2014, challenged the liability mulcted on it.

3. The case of the claimants is that on 18.02.2014, the deceased Joylet Jancy was travelling as a pillion rider in a Motorcycle bearing Registration No.TN-72-AJ-3992, driven by her brother-in-law Rajan Babu and when the two wheeler was proceeding to Nagercoil from Asaripallam Road to Palpannai Junction via Nadukkattu Essaki Amman temple and at about 20.30 hours a stray dog jumped into the bike causing the rider Rajan Babu to lose control of the bike and both of them fell down; that that the said Joylet Jancy has suffered multiple injuries and she was immediately taken to Mathias Hospital and thereafter, she was

referred to Muthu Neruo Hospital and despite treatment, she succumbed to the injuries.

4. It is their further case that the two wheeler bearing Registration No.TN-72-AJ-3992 was owned by Rajan Babu brother-in-law of the deceased and that the same was insured with the appellant/second respondent and as such, the respondents 1 and 2 are liable for the claim.

5. The first respondent has filed a counter statement reiterating the contentions raised in the claim statement with regard to the mode of accident and further stated that the accident was caused neither by the first respondent nor any mechanic defect of the motorcycle; that the first respondent lost the control of the vehicle only due to the stray dog jumped in front of the motorcycle and that since the first respondent's vehicle was duly insured with the second respondent, the second respondent is liable for the claim, if any.

6. The defence of the appellant/second respondent is that FIR was registered against the driver of the lorry; that the mode of accident alleged by the claimants and the first respondent is not correct; that the

claimants are duty bound to trace out the lorry and other particulars with regard to the lorry; that the claim petition without impleading the owner and the insurer of the lorry is legally not maintainable and that therefore, the appellant/second respondent is not liable for the claim.

7. During enquiry, the claimants have examined the first claimant as P.W.1 and two other witnesses as P.W.2 and P.W.3 and exhibited eight documents as Ex.P.1 to Ex.P.8. The second respondent insurer has examined Thiru.Nagarajan, Administrative Officer, as R.W.1 and exhibited insurance police as Ex.R.1. The first respondent has adduced neither oral nor documentary evidence.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment, dated 07.02.2019, holding that the accident was occurred only due to the rash and negligent driving of the first respondent and that the policy is a comprehensive policy, directed the appellant/insurer to pay compensation of Rs.5,84,800/- with interest and costs. Aggrieved by the impugned award, the insurer has preferred the present appeal.

9. The learned counsel for the appellant would submit that the award fastening liability on the insurer is arbitrary; that the policy covers a limited liability of an unnamed passenger i.e., pillion rider, which is at a cap of Rs.1,00,000/- ; that the Tribunal has awarded unlimited, but fault liability, which is excessive by Rs.4,84,800/-; that the liability of the insurer under the package policy on pillion rider/passenger is limited under Section 147 of the Motor Vehicles Act as there is a contract qua contract, which means the liability thereof on separate terms and on payment of additional premium; that the cap of liability is fixed at Rs.1,00,000/- for which a premium of Rs.35/- only was collected and that therefore, the impugned award is liable to be set aside.

10. It is pertinent to note that the appellant/insurer has neither challenged the mode of accident nor the quantum of compensation arrived at by the Tribunal.

11. The main contention of the insurer is that the deceased is the pillion rider, but the vehicle was driven by the owner of the vehicle himself and that since the accident was occurred only due to the rash and negligent driving of the first respondent/owner, the insurer is not liable to

pay any compensation for the death of pillion rider.

12. The Tribunal has rightly referred the judgment of the Hon'ble Supreme Court in ***National Insurance Co.Ltd., Vs. Balakrishnan and another*** reported in ***AIR 2013 SC 473***, wherein it has been held that the comprehensive/package policy of a two wheeler covers a pillion rider and since the vehicle is covered under the comprehensive policy, there is no need for the Motor Accident Claims Tribunal to go into the question whether the insurer is liable for the death or injury of a pillion rider on a two wheeler or the occupants in a private car and that the liability of the insurer is not available to the pillion rider unless the requisite amount of premium is paid for covering risk.

13. In the case on hand, admittedly extra premium for pillion rider was paid and Ex.R.1 policy is a comprehensive policy. Considering the above, the finding of the Tribunal mulcting liability on the appellant/insurer cannot be found fault with.

14. As already pointed out, the appellant has not challenged the quantum of compensation. Moreover, the appellant has not canvassed

any other reason or ground to impugn the award. Consequently, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

15. In the result, the Civil Miscellaneous Appeal is dismissed and the impugned order, dated 07.02.2019 made in M.C.O.P.No.15 of 2015 on the file of the Motor Accidents Claims Tribunal/II Additional Sub-Judge, Nagercoil, is confirmed. Parties are directed to bear their own costs.

22.09.2023

NCC : Yes/No
Index : Yes/ No
Internet : Yes/ No
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To

1.The Motor Accidents Claims Tribunal/
II Additional Sub-Judge, Nagercoil.

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

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.543 of 2019

22.09.2023