BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.11.2023	Delivered on: 19.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.(MD).No.29 of 2021
and
C.M.P.(MD)No.362 of 2021

The Oriental Insurance Co.Ltd.,
Through its Divisional Manager,
Shoba TSM Complex, Railway Station Opposite,
R.S.Road, Pallakad Town,
Kerala State. ... Appellant /2nd Respondent

Vs.

1.Sumathi
2.Minor Sushma
3.Minor Susvath
(P2&3 rep. by mother/ natural guardian
the first petitioner-Sumathi)
4.Guruvammal ... Respondents 1 to 4 / Petitioners 1 to 4
5.Murugan ... 5th Respondent / 1st Respondent

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the decree and judgment dated 10.03.2020 made in M.C.O.P.No.8 of 2015 by the Motor Accident Claims Tribunal cum Additional District Judge (FTC), Theni.

For Appellant	:	Mr.E.Chandrasekaran
For Respondents	:	Mr.R.Suriya Narayanan for R1 to 4
	:	No appearance for R5

JUDGMENT

P.B.BALAJI,J.

The Insurance Company, aggrieved by the award dated 10.03.2020, made in M.C.O.P.No.8 of 2015, by the Motor Accident Claims Tribunal cum Additional District Judge (FTC), Theni, is the appellant before us.

2. Before the Tribunal, the claimants, being wife, minor daughter, son respectively of the deceased and mother of the deceased, sought for compensation for the death of the deceased - Kumar in a motor accident on 13.10.2012. It is the case of the claimants that the deceased - Kumar and his friends were travelling from Theni to Thanjavur in a TATA Indica Car and the driver of the said Car, namely, the first respondent-

Murugan drove the vehicle in a rash and negligent manner and capsized the Car into a large pit on the road, which resulted in fatal injuries to the said deceased – Kumar and others. The claimants prayed for compensation of Rs.36,00,000/-.

3. The appellant / Insurance Company resisted the said petition on the ground that the vehicle was owned by the deceased and there was no third party vehicle involved in the accident and therefore, the claim petition under 166 of the Motor Vehicles Act, 1988, was not maintainable. More over, no additional premium was paid in respect of the risk of death or bodily injury to the owner of the vehicle. The appellant, therefore, prayed for dismissal of the claim petition.

4. Before the Tribunal, the wife of the deceased examined herself as P.W.1 and one Prabusiva @ Vellaiappan was examined as P.W.2 and 10 documents were examined Ex.P1 to Ex.P10 on the side of the claimants. On the side of the respondents, no oral or documentary evidence was let in.

5. The Tribunal, after considering the rival submissions

advanced by the parties, proceeded to hold that the appellant was liable to compensate the claimants for the demise of the said Kumar and held that the policy was a package policy and it would cover the risk of the owner also. There upon, the Tribunal proceeded to award a compensation of Rs.16,85,000/- together with interest at the rate of 7.25% p.a.

6. The said award of the Tribunal is challenged by the appellant / Insurance company by way of this Civil Miscellaneous Appeal, on the grounds that the claim petition itself was not maintainable and the policy covered liability only towards third parties and not the liability of the insured and therefore, the cover contemplated under Section 147 of the Motor Vehicles Act, 1988, was not available to the deceased.

7. We have heard Mr.E.Chandrasekaran, learned counsel for the appellant / Insurance Company and Mr.R.Suriya Narayanan, learned counsel for the respondents 1 to 4 / claimants.

8. The learned counsel for the appellant / Insurance Company would reiterate and reinforce the various grounds of challenge made in the

Civil Miscellaneous Appeal and also rely on the decisions of the Hon'ble Supreme Court as well as the Division Bench of this Court, to fortify his contention that in a case of this nature, where the owner of the vehicle had succumbed to fatal injuries and he himself was the insured and there being no third party vehicle involved, the claim itself was not maintainable before the Motor Accident Claims Tribunal.

9. Per contra, the learned counsel for the claimants would submit that the Tribunal has rightly discussed the various legal proposition placed before it and the ratio laid down by this Court in ***National Insurance Company Limited V. Krishnan*** reported in ***2013-1-TNMAC-729*** and rightly held that the claim petition was maintainable and proceeded to award compensation, which was also in line with the ratio laid down by the Hon'ble Supreme Court in ***Pranay Sethi's*** case. He would therefore pray for dismissal of the appeal.

10. We have paid our anxious and careful consideration to the submissions advanced by the learned counsel for the parties, including the various decisions on which reliance is placed by the appellant / Insurance

Company. We have also independently gone through the oral evidence as well as the documentary evidence exhibited on the side of the claimants and also the amounts awarded by the Tribunal under various heads.

11. The Hon'ble Supreme Court, in ***Dhanraj V. New India Assurance Co. Ltd*** reported in ***2005-ACJ-1(SC)***, has held that the Insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle and that Section 147 M.V.Act does not require the insurance company liable to assume risk for the death or bodily injury to the owner of the vehicle.

12. In the case of ***Oriental Insurance Co.Ltd V. Sunitha Rathi*** reported in ***1998-ACJ-121***, the Hon'ble Supreme Court has held that when the insurer cannot be fastened under the provisions of the M.V.Act, then the question of the insurer being liable to indemnify would not arise at all and proceeded to reverse the judgment of the High Court, which had

directed the Insurance Company to compensate the claimants.

13. The Hon'ble Supreme Court, in ***New India Assurance Co. Ltd., V. Prabha Devi*** reported in ***2013-ACJ-1382***, dealing with the liability of insurance company, where the owner / insured himself died, held that the liability of insurance company is only for the purposes of indemnifying the insured against the liability incurred towards a third party and following the decision of the Hon'ble Supreme Court in ***Dhanraj's*** case, held that since the deceased himself was insured as well as the owner of the vehicle, no compensation can be awarded to the claimants.

14. The judgment of the Division Bench of this Court in the ***Divisional Manager, United India Insurance Co. Ltd., V. R.Rekha*** reported in ***2017-2-TNMAC-674 (DB)***, after discussing the case law on the point in similar circumstances, where the compensation was sought in respect of the deceased, who was the owner / insured of the vehicle, held that the insurer cannot be fastened with liability under the M.V.Act and statutory liability of the insurer is only to extent of indemnification of the insured against third party claims or in respect of damage to property.

15. On a conspectus of the above decisions, we lay down the following principles:

(i) The risk of the owner or borrower or permissive user of the vehicle involved in the accident and consequent claim arising thereunder is not covered under Section 147 of the M.V.Act.

(ii) It does not matter whether the claim in the above cases are made under Section 163-A or Section 166 of the M.V.Act.

(iii) Similarly, the policy being an Act policy or a package / comprehensive policy also makes no difference.

(iv) Even the issue of negligence becomes wholly irrelevant if Section 147 of the Act does not cover the rider, being the owner (or borrower or friend of the owner or a permissive user)

(v) Equally, it does not also matter if the owner / insured was driving / riding the vehicle or whether he was travelling in the vehicle, at the time of the accident.

(vi) In all the above instances, the Insurance Company is not liable as their liability is purely contractual vis-a-vis the owner / insured of the vehicle.

16. Applying the principles enunciated above to the facts of the present case, we have no difficulty whatsoever in holding that after the death of the owner who was insured the claim petition filed by his legal heirs under the M.V.Act, 1988, was clearly not maintainable in the eye of law. The Tribunal, unfortunately, on a misinterpretation of the decisions relied on by the learned counsel for the claimants, proceeded to hold otherwise and awarded compensation, holding the appellant liable for the same.

17. At the same time, we also find that the personal accident coverage to the tune of Rs.2,00,000/- has been contracted by the parties, as seen from the policy of insurance issued by the appellant to the deceased. Though we are setting aside the award at the same time, it would be fair

and equitable that the appellant pays a sum of Rs.2,00,000/- to the respondents / claimants for the personal accident coverage. This amount ought to have been paid to the claimants soon after the accident. However, since the same has not been paid till date, we direct the appellant to deposit a sum of Rs.2,00,000/- along with interest 7.5% p.a.,

18. In fine, the Civil Miscellaneous Appeal stands partly allowed and the award, dated 10.03.2020 made in M.C.O.P.No.8 of 2015 by the Motor Accident Claims Tribunal cum Additional District Judge (FTC), Theni, is hereby set aside. The claimants 1 to 4 / respondents 1 to 4 herein are only entitled only for a sum of Rs. 2,00,000/- towards personal accident coverage as per the terms and conditions of the package policy – Ex.P8**.** The first claimant, wife of the deceased is entitled to Rs.1,25,000/- with proportionate interest and costs and the claimants 2 to 4 / respondents 2 to 4 herein are entitled to Rs.25,000/- each with proportionate interest.

19. The appellant / Insurance Company is directed to deposit the modified award amount of Rs.2,00,000/- along with interest at the rate of

7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. Excess amount, already paid if any, shall be refunded to the appellant / Insurance Company.

20. On such deposit being made, the respondents 1 & 4 / claimants 1 & 4 herein are permitted to withdraw their respective award amount along with interest and costs as apportioned by this Court, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. In respect of the share of minors - respondents 2 & 3, the Tribunal is directed to deposit their share amount in any one of the Nationalised Banks, till they attain majority. Till then, the first respondent - mother of the minors shall be permitted to withdraw the interest accrued thereon, once in three months in order to maintain the minors. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
19.12.2023

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
Ls
To

1.The Motor Accident Claims Tribunal -
Additional District Judge (FTC), Theni.

2.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.

<u>RMT.TEEKAA RAMAN, J.,</u>
and
<u>P.B.BALAJI,J</u>

Ls

judgment in
<u>C.M.A.(MD).No.29 of 2021</u>

19.12.2023