IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2291 of 2013
And
M.P.No.1 of 2013

Branch Manager
Branch Office – II,
National Insurance Company Limited
Jawaharlal Nehru Street,
Pondicherry. ... Appellant

Vs.

1.Jayakandan
2.Krishnamoorthy ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 15.03.2012 made in M.C.O.P.No.616 of 2004, on the file of the Motor Accidents Claims Tribunal, Additional Sub Judge, Tindivanam.

For Appellant : Mr.S.Arunkumar
For Respondents : Mr.M.Suresh for R1
R2 – NRN

J U D G M E N T

The second respondent before the Motor Accidents Claims

Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 15.03.2012 passed by the Motor Accidents Claims Tribunal, Additional Sub Judge, Tindivanam, in M.C.O.P.No.616 of 2004.

2.The learned counsel appearing for the appellant submitted that the first respondent claimant filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.10 Lakhs alleging that on 11.08.2004 at about 11.00 p.m., the first respondent travelled as a pillion rider in the motorcycle, bearing Registration No.PY-01/R-7154 driven by one Kannan in the overfly rountana bridge, Tindivanam and due to the rash and negligent driving of the rider of the motorcycle, the motorcycle dashed against the rountana wall, due to which, the first respondent sustained injuries. After adjudication, the Tribunal awarded a sum of Rs.7,79,968/- as compensation to the claimant along with interest at 7.5% p.a. from the date of petition till the date of deposit with costs and directed the appellant to deposit the amount.

3.The learned counsel appearing for the appellant further submitted that the appeal has been filed only on the ground that whether the pillion rider is a third party entitled to claim compensation under Section 166 of the Motor Vehicles Act. The learned counsel further submitted that similar issue was considered by the Hon'ble Division Bench of this Court in the decision reported in ***MANU/TN/3049/2014 [The New Indian Assurance Co. Ltd., Vs. S.Krishnasamy]***, wherein, it is held that in respect of Act Policy, the policy is covered to the third party alone and the occupant of the vehicle cannot be considered as a third party and that the doctrine of pay and recovery also cannot be applied. In the present case, the claimant is a pillion rider, who is the occupant of the vehicle and hence, the appellant is not liable to pay any compensation to the claimant.

4.Per contra, the learned counsel appearing for the first respondent/ claimant submitted that similar issue was considered by this Court in the case of ***The Divisional Manager, M/s.National Insurance Company Limited Vs. A.Kumaran and another [C.M.A.No.2603 and 2604 of 2016 dated 15.07.2022]***, wherein, it is held that Section II(1)(i) of the terms and conditions of the policy would indicate that the insurer is liable to pay compensation in respect of death or bodily injury to any persons including the occupants. The learned counsel further submitted that the claimant travelled as a pillion rider and hence the appellant is liable to pay compensation to the first respondent claimant.

5.Heard the arguments advanced on either side and perused the materials available on record.

6.Admittedly, the first respondent claimant travelled as a pillion rider in the motorcycle owned by the second respondent and due to the rash and negligent driving of the rider of the motorcycle, the accident occurred and the law enforcing agency registered case as against the second respondent. For the injuries sustained, the first respondent filed claim petition before the Tribunal and the Tribunal awarded a sum of Rs.7,79,968/- as compensation to the claimant along with interest at 7.5% p.a. from the date of petition till the date of deposit.

7.The issue that arise for consideration in this appeal is whether the pillion rider is a third party or not?

8.Similar issue was considered by the Hon'ble Division Bench of this Court in the decision reported in ***MANU/TN/3049/2014 [The New Indian Assurance Co. Ltd., Vs. S.Krishnasamy]***, the relevant portion of which reads as follows:

> *"**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."*

9.The Hon'ble Division Bench of this Court, in the decision cited supra, has held that in respect of Act Policy, the policy is covered to the third party alone and the occupant of the vehicle cannot be considered as a third party and that the doctrine of pay and recovery also cannot be applied. In the present case, Ex.D1 – Insurance Policy reveals that the policy is an Act policy and the claimant is a pillion rider, who is the occupant of the vehicle and he is not a third party. Hence, the appellant is not liable to pay any compensation to the claimant.

10.The decision relied upon by the the learned counsel appearing for the first respondent/ claimant is not applicable to the present case, since the policy in the said case is a Package policy and not Act policy.

11.The civil miscellaneous appeal is allowed on the above terms. The judgment and decree dated 15.03.2012 passed by the Motor Accidents Claims Tribunal, Additional Sub Judge, Tindivanam, in M.C.O.P.No.616 of 2004, is set aside in respect of the appellant Insurance Company. The appellant Insurance Company is permitted to withdraw the entire amount already deposited by them, if any. Liberty is granted to the first respondent/ claimant to recover the compensation amount from the second respondent/ owner of the vehicle.

12.The civil miscellaneous appeal is allowed on the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

03.12.2024

pri

Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
Additional Sub Judge, Tindivanam.

M.DHANDAPANI,J.
pri

C.M.A.No.2291 of 2013
And
M.P.No.1 of 2013

03.12.2024