IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.Nos.1359 of 2018 and 2047 of 2021
and
C.M.P. No.10931 of 2018

C.M.A. No.1359 of 2018

The Manager,
Iffco Tokio General Insurance Company Limited,
No.28, North Usman Road, 2nd Floor,
T. Nagar, Chennai 600 017. ... Appellant

vs.

1. Kadhar
   Shamshath (died)
2. Maideen
3. Imran
4. Masthan (Minor)
   4th respondent minor represented by father and Next Friend 1st respondent.
5. Elumalai ... Respondents

C.M.A. No.2047 of 2021

1. Kadhar
   Shamshath (died)
2. Maideen
3. Imran

4. Masthan (Minor)
 The minor is represented by hisfather and Next Friend 1st petitioner Tr.Kadhar. ... Appellants

vs.

1. Elumalai

2. The Manager,
 Iffco Tokio General Insurance Company Limited
 No.28, North Usman Road, 2nd Floor,
 T. Nagar, Chennai 600 017. .... Respondents

COMMON PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 15.11.2017 in M.C.O.P.No.190/2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Thiruvannamalai.

Appearance in C.M.A. No.1359 of 2018

For Appellant : Mrs. C. Harini
For M/s. M.B. Gopalan Associates

For R1 to R4 : Mr.F. Terry Chella Raja

R5 : No appearance.

Appearance in C.M.A. No.2047 of 2021

For Appellants : Mr.F. Terry Chella Raja

R1 : Ex parte

For R2 : Mrs. C. Harini
For M/s. M.B. Gopalan Associates

COMMON JUDGMENT

The appellants in C.M.A.2047 of 2021 are the claimants in M.C.O.P.No.190/2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Thiruvannamalai, while the Iffco Tokio General Insurance Company Limited, the appellant in C.M.A.1359 of 2018 is the second respondent in the said petition. The claimants filed the petition in M.C.O.P.No.190/2016 under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.20,00,000/- for the death of one Sakilabanu (daughter of claimants 1 and 2 (second claimant died during the pendency of the trial) and sister of claimants 3 to 5) in the road accident that occurred on 29.06.2015.

2. The case of the claimants is that on 29.06.2015, Sakilabanu (since deceased) was travelling as a pillion rider in a TVS Star City two wheeler bearing Registration Number TN-25-AF-6517, belonging to the first respondent, on Chengam-Melchengam Road. One Vijayakumar was riding the said two wheeler. When they were nearing a bridge at Anthanur

Village, the rider of the two wheeler drove the vehicle in a rash and negligent manner as a result of which Sakilabanu fell down and sustained injuries all over her body. She was immediately rushed to a nearby hospital. However, she succumbed to injuries on the same day.

3. According to the claimants, the rash and negligent driving of the rider of the TVS Star City two wheeler bearing Registration Number TN-25-AF-6517, was the cause of the accident and that since the said two wheeler was insured with the second respondent, the IFFCO TOKIO General Insurance Company Limited, Chennai, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. The respondents contested the claim petition by filing their counter.

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the rider of the TVS Star City two wheeler bearing Registration Number TN-25-AF-6517 and since the rider of the two wheeler did not have a valid driving license on the date of

accident, directed the second respondent Insurance Company to pay compensation of Rs.8,46,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance, and then recover the same from the owner of the two wheeler, under the same cause of action (pay and recover).

6. Challenging their liability to pay compensation to the claimants, the Iffco Tokio General Insurance Company Limited, has filed C.M.A. No.1359/2018 and the claimants have filed C.M.A. No.2047/2021 seeking enhancement of compensation.

7. Heard Mrs. C. Harini, learned counsel for the Insurance Company and Mr.F. Terry Chella Raja, learned counsel for the claimants.

8. Mrs.C. Harini, learned counsel for the Insurance Company contended that the policy of insurance (Ex.P2) clearly shows that it is only a liability policy (Act Policy) and that the Tribunal, without taking this aspect into consideration, had directed the Insurance Company to pay compensation to the claimants. She therefore prayed for setting aside the

order of 'pay and recover' passed by the Tribunal.

9. Per contra, Mr.F. Terry Chella Raja, learned counsel for the claimants contended that the Tribunal after analysing the evidence on record, directed the Insurance Company to pay compensation to the claimants in the first instance and then recover the same from the owner of the two wheeler, which is perfectly in order. However, he contended that the Tribunal has not awarded just compensation and prayed for enhancement of the same.

Liability

10. A perusal of the Policy shows that the two wheeler had only an 'Act Policy' and not a 'Comprehensive Policy'. The Policy covers only third party risks and personal accident cover.

10.1. Under the Indian Motor Tariff (IMT), different types of policies are issued and they are contained in IMT section 7 (page 107 of IMT). They are

(a) Standard form for liability only policy.

(b) Standard form for private car package policy.

(c) Standard form for two wheeler package policy.

(d) Standard form for commercial vehicles package policy.

(e) Standard form for motor trade package policy and the like. Each policy is split into different sections to deal with different contingencies and the parties bind themselves to the terms of the clause contained in each section of the policy. For example, the package policy for a private car which is applicable to the present case contains:-

Section I Loss of or damage to the vehicle insured, Section II Liability to third parties, Section III Personal accident cover for owner-driver there are other conditions and limits. In this appeal, we are concerned with the liability of the insurance company in respect of a gratuitous passengers/occupants in a private vehicle (car).

The first policy in Section 6 of IMT is liability only policy or an act only policy. In that the liability to third parties is set out as hereunder:-

LIABILITY TO THIRD PARTIES:

i] Subject to the Limit of liability as laid down in the schedule hereto, the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle anywhere in India against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act.

ii] damage to property other than property belonging to the insured or held in trust or in the custody of control of the insured up to the limit specified in the schedule (emphasis supplied).

10.2. In the instant case, the specific contention of the insurance company is that the Insurance Policy is an "Act policy" and therefore, the same would not cover the pillion rider. A perusal of the insurance policy clearly shows that it is only an Act policy. Only a comprehensive/package policy would cover the liability of the inmates of the car or a pillion rider in a scooter and hence the insurance company is not liable to pay compensation.

10.3. In the decision in ***M/s.New India Assurance Co. Ltd., Vs Meenakshi and others*** in ***CMA No.3658 of 2014, dated 24.03.2023*** a Division bench of this Court had also held that the 'Act Policy' cannot cover the risk of inmates of the Car or a Pillion rider of the Scooter. The relevant portion of the said decision is extracted hereunder:

> *"(32) In Bhagyalakshmi and Others V. United Insurance Company L**imited and Another** reported in **2009 [7] SCC 148,** the Hon'ble Supreme Court noticed conflicting views on the question as to whether gratuitous passengers travelling in a private car or pillion riders carried on two wheelers are automatically covered under a package policy. The Hon'ble Supreme Court opined that the matter requires consideration by a Larger Bench. However, there is no divergent view as regards a case which is similar to the present case where the policy is a statutory policy or an Act only Policy. The uniform view expressed in all other judgments is that the gratuitous passenger in a private vehicle would not be covered for a bodily injury or death*

under the policy insurance which is an Act Policy. In respect of a package policy for private cars, the Hon'ble Supreme Court expressed its view that the matter requires consideration by a Larger Bench. The scope of reference to a Larger Bench was in fact considered by the Hon'ble Supreme Court in ***National Insurance Company Limited V. Balakrishnan and Another*** *reported in* ***2013 [1] SCC 731****, wherein the Hon'ble Supreme Court has held as follows:-*

> **"20.** *Thus, it is quite vivid that the Bench in Bhagyalakshmi case [(2009) 7 SCC 148 : (2009) 3 SCC (Civ) 87 : (2009) 3 SCC (Cri) 321] had made a distinction between the "Act policy" and "comprehensive policy/package policy". We respectfully concur with the said distinction. The crux of the matter is what would be the liability of the insurer if the policy is a "comprehensive/package policy". We are absolutely conscious that the matter has been referred to a larger Bench, but, as is evident, the Bench has also observed that it would depend upon the view of the Tariff Advisory Committee pertaining to enforcement of its decision to cover the liability of an occupant in a vehicle in a "comprehensive/package policy" regard being*

had to the contract of insurance."

(33)The position reiterated by the Hon'ble Supreme Court in various other decisions in cases of Act Policy is also reiterated in the case of ***Balakrishnan's case [cited supra]****, to the effect that an Act Policy cannot cover a third party risk of an occupant in a car. "*

Quantum

11. In so far as the quantum of compensation is concerned, in the absence of income proof, the Tribunal took the notional income of the deceased as Rs.7,000/- per month (including future prospects). In the decision in ***Kishan Gopal & Anr vs Lala & Ors*** reported in ***(2014) 1 SCC 244,*** the Supreme Court fixed the notional annual income of the deceased minor victim at Rs.30,000/- for the accident that took place in the year 1992. In the instant case, the accident happened in the year 2015. Therefore fixing the notional annual income of the minor as Rs.1,00,000/- would meet the ends of justice. The proper multiplier to be adopted in the instant case is 18 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.***

Calculation :

Notional Annual Income = Rs.1,00,000/-
Applying multiplier 18 = Rs.1,00,000/- X 18
= Rs.18,00,000/-

In addition to that the claimants are entitled to Rs.1,60,000/- (40,000 X 4), Rs.15,000/- and Rs.15,000/- for 'loss of Consortium', 'loss of Estate' and 'funeral expenses' respectively as per the decision in ***National Insurance Co. vs Pranay sethi and others*** (cited supra). Thus, the claimants are entitled to a total compensation of Rs.19,90,000/- (18,00,000 + 1,60,000 + 15000 + 15000) as shown in the following tabular column:

S.No.	***Head***	***Amount granted by this court***
1.	Loss of dependency	Rs.18,00,000 /-
2.	Loss of consortium (Rs.40,000/- x 4)	Rs.1,60,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
	Total	Rs.19,90,000/-

11.1. Thus, the compensation awarded by the Tribunal is enhanced to Rs.19,90,000 /- which would carry interest at the rate of 7.5% per annum.

12. In the result,

i. The Civil Miscellaneous Appeals are allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

ii. The order of the Tribunal directing the Insurance Company to pay the Award amount to the claimants in the first instance and then recover the same from the owner of the two wheeler is set aside.

iii. The Insurance Company is at liberty to withdraw the amount deposited by them.

iv. The compensation awarded by the Tribunal is enhanced to Rs.19,90,000 /-.

v. The fifth respondent in C.M.A. No.1359 of 2018 , the owner of the two wheeler, is directed to deposit the compensation amount of Rs.19,90,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order, to the credit of M.C.O.P.No.190/2016 on the file of the Motor Accident Claims

Tribunal, Special Subordinate Court, Thiruvannamalai.

vi. The enhanced compensation amount of Rs.19,90,000/- is apportioned to the claimants as follows:

Kadhar (first claimant)	Rs.7,90,000/-
Maideen(third claimant)	Rs.4,00,000/-
Imran(fourth claimant)	Rs.4,00,000/-
Minor Masthan (fifth claimant)	Rs.4,00,000/-

vii. On such deposit being made, the appellants 1 to 3 (claimants 1,3 and 4 in M.C.O.P. No.190/2016) in C.M. A. No.2047/2021 are at liberty to withdraw the same as per the apportionment made by this Court after following due process of law. Since the fourth appellant (5th claimant) is a minor, his share may be deposited in anyone of the nationalised bank until he attain majority.

viii. The claimants are not entitled to claim interest amount for the period of delay of 283 days in filing this appeal, as per the order of this Court dated 14.07.2021in C.M.P. No.8512 of 2021.

01.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No

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To

1.Motor Accident Claims Tribunal,
Special Subordinate Court, Thiruvannamalai.

2.The Section Officer,
VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.

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