IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2143 of 2022
and CMP No.16624 of 2022

United India Insurance Company Ltd.,
Divisional Office-I,
No.104 A, Paramanur Main Road,
Salem – 636 007. ..Appellant

.vs.

1.Govindaraj

2.Amaravathi

3.Rasi Construction Equipments
No.136, RT Nagar, Reddiyur Post,
Salem. ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 30.04.2021 in MCOP No.38 of 2019 on the file of Motor Accidents Claims Tribunal (Principal District Judge), Salem.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.V.Kumaravelan for R1 and R2

No Appearance for R3

JUDGMENT

The Insurance Company has filed the present appeal challenging the Award passed by the Motor Accident Claims Tribunal, Salem in MCOP No.38 of 2018, dated 30.04.2021.

2.The claimants are the parents of the deceased Nagaraj. The deceased Nagaraj was working as a JCB Service Engineer in the 3rd respondent Company. On 26.03.2017 at about 7.45 a.m., the deceased after attending his service work at Ariyangulam, was returning back to his office at Dharmapuri in a two wheeler which stands in the name of the Company. According to the claimants, an unknown vehicle had come in the opposite direction and was driven in a rash and negligent manner and it dashed on the two wheeler. As a result of which, the deceased was thrown out of the two wheeler and he sustained grievous injuries and unfortunately, succumbed to the injuries on 27.03.2017. An FIR also came to be registered in Crime No.343 of 2017. It is under these circumstances, the claim petition came to be filed seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciating the oral and documentary evidence, came to a conclusion that the negligence was on the part of the deceased and the accident had taken place only due to his negligence. After having come to such a conclusion, the Tribunal took into consideration the fact that the deceased was working for the company and the two wheeler stood in the name of the Company and they had taken the accident claim and had paid a sum of Rs.140/- to the Insurance Company towards premium. Therefore, considering the policy that was taken by the Company, the Tribunal proceeded to bring this case under the scope of Section 163-A of the Motor Vehicles Act and fixed the compensation at Rs.5,00,000/- (Rupees Five Lakhs only) as per the amendment to the II Schedule of the Motor Vehicles Act. This amount was directed to be paid by the Insurance Company with interest at the rate of 7.5% per annum. Aggrieved by the same, the present appeal has been filed by the Insurance Company.

4.Heard Mr.D.Bhaskaran, learned counsel appearing on behalf of the petitioner and Mr.V.Kumaravelan, learned counsel appearing on behalf of the 1 and 2nd respondents.

5.This Court has carefully considered the submissions made on either side and the materials available on record.

6.This Court has also carefully gone through the Award passed by the Tribunal.

7.The main ground that was urged on the side of the Insurance Company is that the claimants are not entitled to get any compensation, since the negligence was attributed on the deceased and the deceased was the tort-feasor in this case and therefore, no compensation can be granted under Section 163-A of the Motor Vehicles Act. It was further contended that the monthly income of the deceased was Rs.15,000/- and whereas, Section 163-A will cover only those persons whose annual income is Rs.40,000/- and on this ground also, the claimants are not entitled to claim compensation. The further contention that was raised was that the even if the claim is to be brought within the scope of an employee of the 3rd respondent Company, the policy which was marked as Ex.R1 does not fall under IMT-29 which alone covers the liability of the employees of the insured for which additional premium is payable. The evidence of RW2 was also relied upon to contend that the personal accident claim for which Rs.140/- was paid as the premium will cover only the passenger travelling in the vehicle belonging to the Company and did not cover the employee of the company. That apart, in the instant case, admittedly, the deceased was the rider of the vehicle and hence, the policy by no stretch can cover the rider.

8.Per contra, the learned counsel for the claimants would submit that a sum of Rs.140/- was paid towards the comprehensive policy and the employee of the Company was also covered under the policy. Therefore, the Tribunal has rightly directed the Insurance Company to pay the compensation amount under the terms of the policy. The learned counsel further submitted that it is left to the option of the claimants to either make the claim under Section 166 or under Section 163-A of the Motor Vehicles Act and they can choose in between both. The Tribunal has rightly brought this case within the scope of Section 163-A of the Act and had fixed the compensation taking into consideration the amended II Schedule and that the same does not warrant the interference of this Court.

9.The Tribunal on appreciation of evidence has come to a categoric conclusion that the rider of the vehicle was the tort-feasor in this case. Page 13 of the Award, it has been held that at the time of the accident, the negligence was on the part of the rider. Having held so, the Tribunal proceeded to treat the claim petition under Section 163-A of the Motor Vehicles Act.

10.In the first place, when the rider of the vehicle was found to be a tort-feasor, the claim cannot be sustained under Section 163-A of the Motor Vehicles Act. The Judgement of the Apex Court in ***Ramkhiladi and Another vs. The United India Insurance Company and Another*** reported in ***2020 1 TN MAC 1*** covers this issue. Paragraph No.9.5 of the Judgement is extracted hereunder:

> *9.5. It is true that, in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence*

and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the principle of no-fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163-A of the Act against the owner and insurer of the vehicle bearing Registration No. RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing Registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in Dhanraj, an 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. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

11.The above Judgement has been followed by this Court consistently and also in the latest Judgement in CMA No.1915 of 2021, dated 22.12.2023.

12.The next issue is that for the purpose of claiming the compensation under Section 163-A, the annual income of the claimant must not exceed Rs.40,000/-. In the instant case, admittedly, the monthly income of the deceased was Rs.15,000/- That by itself, disentitles the claim petition to be dealt with under Section 163-A of the Motor Vehicles Act. The Judgement of the Apex Court in ***Deepal Girishbhai Soni and Others vs. United India Inusrance Co., Ltd., Baroda*** reported in ***2004 5 SCC 385*** covers this issue.

13.In the light of the above discussion, the claim that was decided by the Tribunal under Section 163-A of the Motor Vehicles Act is totally unsustainable.

14.The next issue is as to whether the claimants will have to be paid under the accident policy cover. A sum of Rs.140/- has been paid as premium and RW2 during the re-examination has stated as follows:

> *1ம் எதிர்மனுதாரருடைய பாலிசியில் பி.ஏ கிளைம் என்ற காலத்தில் கட்டப்பட்டுள்ள ரூ.140 ஐ 1ம் எதிர்மனுதாரரின் வாகனத்தில் பயணம் செய்யும் நபர்களுக்கு மட்டும்தான் அப்ளை ஆகம். அந்த நிறுவனத்தில் பணியாற்றும்*

பணியாளர்களுக்கு கவர் ஆகாது.

15.The policy that was marked as Ex.R1 through RW2 also shows that the two wheeler was insured in the name of the Company viz., the 3rd respondent herein. If the employee of the Company is to be brought within the scope of the terms of the policy, the policy must fall under IMT-29 and only then, the legal liability will extend to the employee of the insured.

16.The above issue is also no longer *res integra* and it is covered by the Judgement of the Division Bench in CMA No.2307 of 2018 and 586 of 2019, dated 23.03.2020. The relevant portions are extracted hereunder:

> ***20. Issue No.5***
>
> ***Whether the owner of the vehicle is liable to pay additional premium in terms of IMT-29 to cover its employees?***
>
> *20.1 As far as fifth issue is concerned, now we have to decide whether the owner of the vehicle is liable to pay additional premium to cover its employees in terms of IMT-29? To answer this issue it is relevant to extract the IMT-29 as follows:*
>
> *"IMT-29 Legal Liability to Employees of the Insured other than paid driver and/or conductor and /or cleaner who may be travelling or driving in the employer's car (Private cars*

only/Motorized two wheelers (not for hire or reward)

"In consideration of the payment of an additional premium @ Rs.25/- per employee insured notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer will indemnify the insured against the insured's liability at Common Law and Statutory Liability under the Fatal Accidents Act, 1855 for compensation (including legal costs of any claimant) for death of or bodily injury to any employee (other than paid drivers) of the within named insured being carried in or upon or entering in or getting on to or alighting from or driving the vehicle insured. Provided that in the event of an accident whilst the vehicle insured is carrying more that ... employees of the insured (including the driver) the insured shall repay to the insurer a rateable proportion of the total amount payable by the insurer by the reason of this endorsement in respect of accident in connection with such vehicle insured. Subject otherwise to the terms, condition limitations and exception of this policy."*

20.2 The IMT-29 is relating to the payment of additional premium to cover the liability to employees of the insured other than the paid drivers/conductors/cleaners.

20.3 The terms and conditions of Section II-Liability to third parties, as stated above, clearly excludes payment of compensation to the employees of the insured under the category of third party *liability. Section II ultimately provides that third party liabilities would be covered as provided under Section 147 of the M.V. Act. Section 147 of the M.V. Act, clearly spells out that premium paid by the insured would cover only the statutory liabilities as stated thereunder, excluding the liabilities to the employees of the insured. Therefore, under Section 147 of M.V. Act, it is mandatory for the insured to enter into a private contract with the insurer by way of payment of additional premium to cover its employees.*

20.4 The premium paid under basic third party liability does not cover the employees of the insured. As we stated earlier, additional premium paid under IMT-16 to cover unnamed passengers also excludes employees of the insured from any coverage. Therefore, in order to cover the employees of the insured, the insured is required to pay additional premium in terms of IMT-29.

20.5 This Court vide orders dated 05.09.2019 and 23.09.2019 directed the IRDA to answer the following queries: "

(i) Whether the Insurance Company is liable to pay compensation to the occupant in a private car without paying additional premium under IMT-29?

(ii) What is the scope of IMT-29 after the issuance of circular dated 3 December 2009, by IRDA."?

20.6 In compliance with the direction of this Court, *Mr.M.B.Raghavan, learned counsel appearing for IRDA filed a memo, dated 30.01.2013 along with enclosures.*

20.6.1 As far as first query is concerned, the IRDA submits that the Insurance Company will not be liable to pay compensation in an accident for the occupants in the private car, who are employees of the insured/owner travelling without obtaining coverage under IMT-29.

20.6.2 As far as second query is concerned, the IRDA answered that the circular, dated 03.12.2009 was not intended to modify the policy terms or include coverage for employee/occupant but only to deal with dispute being raised by the insurer for all occupants (other than employees/occupants) contrary to the express wording of the policy.

20.7 Thus, from the memo filed by IRDA dated 30.09.2019, it is clear that insurer will not have liability for occupants in a private car, who are employees of the insured/owner (except the paid driver) without obtaining coverage under IMT-29.

20.8 Therefore, if an employer intends to cover its employees, it is mandatory for the employer to pay additional premium in terms of IMT-29. In the event of non payment of any additional premium, in terms of IMT-29, insurance coverage will not be extended to its employees. In the present case, admittedly, no additional premium was paid under IMT-29 to cover the employees of the insured.

Therefore, without payment of additional premium certainly, the employees are not entitled to make any claim under the pretext that the policy issued by the insurer was a comprehensive/package policy.

20.9 At the time of argument, the learned Senior Counsel, Mr.M.S.Krishnan made a submission that issue relating to applicability of IMT-29 has been raised for the first time before this Court. Had they raised this issue at the time of trial, they would have had a chance to examine whether the claimant was travelling as employee in the course of employment. We do not find any force in the said submission of learned Senior Counsel as there is no requirement to raise the said issue now since the claimant had filed claim statement stating that the accident occurred, when he was travelling in a Bollero Jeep after visiting his work site at Joda towards Bhubaneswar. Corroborating the same, P.W.1 and P.W.2 also deposed evidence. The said averment was not disproved by the Thriveni. Further, at the time of chief examination, R.W.1 has clearly deposed about the difference between IMT-28 and IMT-29. Therefore, even at the time of examination of witnesses, the issue relating to the applicability of IMT-29 was raised. It is only the insured, who failed to crossexamine R.W.1. in this aspect. Therefore, the contention of the learned Senior Counsel that for the first time, the applicability of IMT-29 has been raised before this Court does not have any merit. Therefore, we are of the considered view that, in the present case, no additional premium was paid under IMT-29 to cover the employees of the insured.

20.10 At this juncture, it would be appropriate to deal with various case laws cited by Mr.M.S.Krishnan, learned Senior Counsel appearing for the owner of the vehicle. The learned Senior counsel referred mainly the latest decision of the Hon'ble Supreme Court in the case of New India Assurance Company Vs. Shanti Bopanna and other (supra). By referring the above case, the learned Senior Counsel contended that the Hon’ble Supreme Court has categorically held that the employees will be covered under the comprehensive policy. In the present case, since the Policy issued is under the comprehensive/package policy, he contended that the said case is squarely applicable for the present case. However, on the perusal of the above judgment, it is clear that the additional premium payable in terms of IMT-29 to cover the legal liabilities to the employees of the insured other than paid driver had not been brought into the knowledge of the Hon’ble Supreme Court. Since the counsels failed to bring into the knowledge of the Hon’ble Supreme Court, the Hon’ble Supreme Court had no occasion to deal with about the applicability of IMT-29. The finding of the Hon'ble Apex Court in Shanti Bopanna case (supra) was made without testing the requirement of payment of additional premium by the employer to cover its employees under IMT-29. Therefore, we are of the view that the principles laid down by the Hon'ble Apex Court in the Shanti Bopanna case will not be applicable to the case on hand.

20.11 In all other cases, as referred by both the parties, there was no finding on the aspect of applicability of IMT-29. Therefore, all the above cases. referred by the learned Senior counsel appearing for

> *the owner of the vehicle will not be applicable for the present case. In fine, we hold that in the present case, owner of the vehicle is liable to pay additonal premium under IMT-29, to cover its employees. Obviously, no additional premium was paid in terms of IMT-29. Hence, we are of the view that the insurance company is not liable to pay compensation as awarded by the Tribunal. Accordingly, Issue No.5 is answered.*

17.It is clear from the above that wherever the employer intends to cover the employees under the policy, it is mandatory for the employer to pay the additional premium in terms of IMT-29. Admittedly, the same has not been done in this case. Therefore, the Insurance Company cannot be made to pay the compensation to the employee who is the deceased in this case, since the policy does not come under IMT- 29.

18.In the light of the above discussion, the Award passed by the Tribunal in MCOP No.38 of 2018, dated 30.04.2021, requires the interference of this Court and accordingly, the same is hereby set aside.

19.The above order will not come in the way of the claimants make their claim against 3rd respondent Company under the Workmen Compensation Act, if they are otherwise entitled.

20.In the result, this civil miscellaneous appeal is allowed in the above terms. Any compensation amount that has been deposited by the Insurance Company shall be permitted to be withdrawn along with the accrued interest. No Costs. Consequently, connected miscellaneous petition is closed.

15.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accidents Claims Tribunal (Principal District Judge), Salem.

N. ANAND VENKATESH., J

ssr

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and CMP No.16624 of 2022

15.04.2024