IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.243 of 2001

National Insurance Company Limited,
Bangalore-27. … Appellant

vs.

1.Jayanthi
2.Minor Ramakanth
3.Minor Rajanikanth
4.Kuldeep … Respondents
[Minors 2 and 3 represented by
mother and Guardian 1st respondent]

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 07.09.2000 made in M.C.O.P.No.193 of 1996 on the file of the Motor Accident Claims Tribunal, II Additional District Judge cum Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr.S.Arun Kumar
For Respondents 1 to 3 : Mrs.V.Srimathi
For 4th Respondent : Notice Dispensed With.

JUDGMENT

Being aggrieved by the Judgment and Decree passed in M.C.O.P.No.193 of 1996 on the file of Motor Accident Claims Tribunal(II

Additional District and Sessions Court), Krishnagiri, dated 07.09.2000, the Insurance Company has preferred this Civil Miscellaneous Appeal in respect of liability.

2. The claim petition was filed under Section 166 of Motor Vehicles Act, claiming compensation of Rs.6,00,000/- for the death of Vasudevan who died in the road accident that occurred on 01.12.1993.

3. The Tribunal after evaluating the evidence has held that the deceased Vasudevan travelled as a substitute driver and hence the Insurance Company is liable to compensate the legal representatives of the deceased and granted a compensation of Rs.4,30,000/- with interest at the rate of 12% per annum from the date of filing of petition till the date of realisation.

4. The learned counsel appearing for the appellant/Insurance Company Mr.S.Arunkumar would vehemently contend that the deceased who is the owner of the goods carriage vehicle was not covered under the policy. Therefore, the Insurance Company is not liable to pay compensation to the claimants. To buttress his arguments, the below said judgments were referred to:

i) United India Insurance Co. Ltd., v. Lakshmi reported in

1989- 2-LW.

ii) Dhanraj v. New India Assurance Co. Ltd., and another reported in 2004 (4) CTC 716 (SC).

iii) New India Assurance Co. Ltd., v. Meera Bai and Others reported in (2006) 9 SCC 174.

5. Per contra, the learned counsel appearing for the respondents/claimants would strenuously argue that the deceased Vasudevan was travelling as a substitute driver, therefore, the Insurance Company is liable to pay compensation to him. Based on the said details, the Tribunal has granted compensation to the legal representatives of the deceased needs no interference.

6. At trial, on the claimants' side, the 1st petitioner has examined herself as PW1 and Exs.P1 to P5 were marked. On the respondents' side no witness was examined.

7. The judgment rendered in ***United India Insurance Co. Ltd., v. Lakshmi*** reported in ***1989-2-LW*** was referred to by the learned counsel for the appellant in order to contend that Act policy covers only liability incurred by the insured in respect of death or bodily injury or damage to

any property of a 3rd party, person (owner of the lorry) travelling in the lorry who died in an accident, not covered. The owner of the lorry travelled in the lorry who died in an accident, not covered and held that the insurance company is not liable to pay compensation.

8. In ***Dhanraj v. New India Assurance Co. Ltd., and another*** reported in ***2004 (4) CTC 716 (SC)***, the appellant/claimant with certain other person was travelling in his own Jeep, the Jeep met with an accident, the claim petitions were filed by the injured as well as the owner. Motor Accident Claims Tribunal directed the appellant/owner and the insurance company to pay compensation. This was challenged by the insurance company before the High Court of Madhya Pradesh, wherein, the appeal was allowed and it was held that the claimant who was the owner of the vehicle and the insurance company is not liable to pay any compensation. This Judgment was sought to be challenged before the Apex Court. The Hon'ble Supreme Court held that it has not been shown that the policy covered any risk to the owner himself, and owner of the vehicle can claim only if a personal accident insurance has been taken out and the judgment of the High Court of Madhya Pradesh was confirmed by dismissing the appeal.

9. It is the evidence of PW1-Jayanthi that on 01.12.1993 at about 11.30 p.m., the deceased Vasudevan, owner of the goods carriage vehicle was travelling along with his driver Kuldeep along Hosur-Krishnagiri road. At the point of Kolappalli inkulab Hotel, due to the rash and negligent driving of the driver, he hit on the rear side of lorry which was proceeding in the same direction. It is the case of the claimants that due to rash and negligent driving of the driver of the goods carriage vehicle, accident occurred.

10. The learned counsel appearing for the appellant/Insurance Company, Mr.S.Arun Kumar stoutly contended that the insured is not covered under the policy as a owner and drew the attention of this Court by citing the above said judgments and further contended that ultimately the insurer is not liable to pay compensation as the owner is not covered under the policy.

11. On a thorough perusal of the claim petition and the evidence, it is evident that the deceased Vasudevan travelled as a substitute driver. His driving licence is Ex.P1.

12. The policy is Ex.P5. It is a commercial vehicle insurance B-policy. Whether this policy covers the risk of injury or death to the owner of

the vehicle is to be seen. It is relevant to refer to the provisions of Section 147 of the Motor Vehicles Act, 1988, which is extracted hereunder:

> ***"147. Requirement of policies and limits of liability. –*** *(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -*
>
> *(a) is issued by a person who is an authorised insurer; and*
>
> *(b) insurer the person or classes of persons specified in the policy to the extent specified in sub – section (2) –*
>
> *(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including 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 a public place ;*
>
> *(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;*
>
> *Provided that a policy shall not be required –*
>
> *(i) to cover liability in respect of the death, arising out of and in the course of this employment, of the employee of*

a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. – For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy

of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely :-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damages to any property of a third party, a limit of rupees six thousand :

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder

is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

13. As per Section 147 of the Motor Vehicles Act, insurance policy covers the liability in respect of death of or bodily injury to any person, including the owner of the goods or his authorised representatives 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 a public place. Section 147(1)(b)(ii) requires the insurance company to compensate against the death of or bodily injury to any passenger of a public service vehicle caused by or

arising out of the use of the vehicle in a public place.

14. Settled principle of law of insurance is that the liability of an insurance company is to indemnify the insured against liability incurred towards third person or in respect of damages to properties.

15. In this case, admittedly, owner of the vehicle as a substitute driver travelled along with his driver at the time of accident. Due to the rash and negligent driving of his driver, Vasudevan/owner of the vehicle also sustained fatal injuries and both the driver as well as owner (substitute driver) died due to the accident, which is not in dispute.

16. In the insurance policy, no additional premium is paid to cover the risk of injury or death of the owner. Section 147 of the Motor Vehicles Act also does not impose any obligation on the part of the Insurance Company. Therefore, unless additional premium is paid, there is no liability for the insurance company to pay compensation to the legal heirs of the owner of the vehicle. As there is no coverage, as per the terms of the policy and based on the law laid down by the Apex Court, the Insurance Company is not liable to pay any compensation to the legal representatives of the deceased owner.

17. Therefore, based on the aforesaid observations, the judgment and decree of the Tribunal (II Additional District Court), Krishnagiri stands set aside.

18. In the result, this Civil Miscellaneous Appeal stands allowed and the judgment and decree dated 07.09.2000 passed by the Motor Accident Claims Tribunal, II Additional District Judge cum Chief Judicial Magistrate, Krishnagiri in M.C.O.P.No.193 of 1996, is set aside. The appellant/Insurance Company is permitted to withdraw the amount already deposited, if any. No costs.

30.01.2024

Index : Yes/No
Speaking / Non-speaking order
ssn

R.KALAIMATHI, J.,

ssn

To:

1. The Motor Accident Claims Tribunal,
   II Additional District Judge
   cum Principal Judicial Magistrate, Krishnagiri.

2. The Section Officer,
   V.R.Section,
   High Court of Madras,
   Chennai.

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