IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2527 of 2023 and
C.M.P.No.23405 of 2023

National Insurance Co. Ltd.,
3rd Party claims - Hub,
Murugesa Naicker Complex,
No.66, Greams Road, 1st Floor,
Thousand Lights,
Chennai - 600 006. ... Appellants

vs.

1. Christi Mary
2. P.T.Bharathi ...
Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 12.06.2023 in M.C.O.P.No.484/2019 on the file of the Motor Accident Claims Tribunal, Subordinate Judge's Court, Poonmallee.

For Appellant : Mr.S.Vadivel
For Respondents : No appearance

J U D G M E N T

The appellant, the National Insurance Company Limited is the second respondent in M.C.O.P.No.484/2019. The first respondent filed a claim petition in M.C.O.P.No.484/2019 under Section 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T. Rules before the Motor Accident Claims Tribunal, Poonamallee seeking compensation of Rs.10,00,000/- for the injuries sustained by her in the road accident that took place on 21.05.2019.

2. The brief case of the claimant is as follows :

On 21.05.2019, Christi Mary was travelling as a Pillion rider in a motor cycle bearing Registration number TN-01-AC-6945 on Mount - Poonamallee Trunk Road. While she was nearing JCN Road junction, the rider of the two wheeler / 2nd Respondent (husband of the claimant) suddenly applied brake to avoid hitting a Tata Magic vehicle, coming in the opposite direction, as a result of which, the claimant fell down and sustained injuries all over her body.

3. According to the claimant, the accident took place due to the rash and negligent driving of the driver of the two wheeler and that since the said vehicle was insured with the present appellant, the National Insurance Company Limited, the owner and the insurer are jointly and

severally liable to pay compensation to her.

4. In the Tribunal, the second respondent, the owner of the vehicle remained absent and was set *exparte*. The appellant/Insurance Company resisted the claim petition on all grounds available to the insurer under Section 170 of the Motor vehicles Act.

5. The Tribunal, after analysing the evidence on record, fixed the negligence on the part of the rider of the two wheeler and awarded compensation of Rs.2,38,015/- to the claimant and directed the present appellant Insurance Company to deposit the said amount together with interest @ 7.5% per annum vide her orders dated 12.06.2023.

6. Questioning the liability to pay compensation, the present appeal is filed by the appellant / the National Insurance Company Limited.

7. Heard Mr.S.Vadivel, learned counsel for the appellant. There is no representation for the first respondent.

8. Mr.S.Vadivel, learned counsel for the appellant would contend that since the Insurance Company had issued only 'Act Policy', the pillion rider of the two wheeler bearing Registration number TN-01-AC-6945 is not entitled to get any compensation from the Insurance Company and that the Tribunal had not gone into this aspect even though the Insurance Policy was marked as Ex.P3. He also relied on the decision of the Division Bench of this Court in ***M/s.New India Assurance Co. Ltd., Vrs Meenakshi and others in CMA No.3658 of 2014, dated 24.03.2023*** and contended that the Act Policy cannot cover a third party risk of a pillion rider in a two wheeler. He, therefore prayed for setting aside the order of the Tribunal.

9. A perusal of the FIR (Ex.P1) shows that the rider of the Two wheeler bearing Registration number TN-01-AC-6945 was the wrong doer and the Police after completing investigation, laid a final report against the rider of the two wheeler and a copy of the final report was marked as Ex.P8. Therefore, it is clear that the rider of the two wheeler was rash and negligent in driving his vehicle.

10. It is pertinent to point out that the Tribunal while deciding the claim petition under Motor vehicles Act should examine the terms of the Policy, produced by the Insurer and in the event of denial of liability, the finding should be recorded with regard to the nature of Policy, as to whether it was 'Act Policy' or 'Package Policy'.

11. In the instant case, the Tribunal has not given any definite finding in this regard though the Insurance company has taken a specific plea that they are not liable to pay compensation to the claimant since the Policy of the Insurance is only an Act Policy.

12. 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).

13. 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 of a two-wheeler. 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.

14. 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 a third party risk of an 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 Limited 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. "*

15. The Insurance Company has not questioned the quantum of compensation in this appeal. Therefore, the compensation awarded by the Tribunal is upheld. However, the owner of the two wheeler bearing Registration number TN-01-AC-6945 is liable to pay the entire compensation amount to the claimant. The Insurance Company can withdraw the compensation amount, if any, deposited by them in the Court.

16. In the result,

i. The Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

ii. The quantum of compensation awarded by the Tribunal is upheld.

iii. The second respondent, the owner of the two wheeler is directed to deposit the entire compensation amount of Rs.2,38,015/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation, 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.484/2019 on the file of the Motor Accident Claims Tribunal, Subordinate Judge's Court, Poonamallee.

iv. On such deposit being made, the 1st respondent / claimant is at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law.

28.08.2024

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

To

1.The Motor Accident Claims Tribunal,
Subordinate Judge's Court, Poonmallee

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

R.HEMALATHA, J.

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