BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.15 of 2013
and
M.P(MD) No.1 of 2013

The New India Assurance Company Limited,
Represented by its Branch Manager,
St.Joseph Building, A.M.Road,
Perumbavoor. ... Appellant/4th Respondent

-vs-

1. Bhagavathy

2. Saratha
3. Amutha
4. Vaikundaraj
5. Kavitha
6. Santhi ... Respondents 1 to 6/Petitioners

7. Joseph Ramesh Sudam

8. The National Insurance Company Limited,
Represented by its Branch Manager,
1st Floor, Anguvilas Building,
112, North Car Street, Nagercoil,
Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District.

9. Balakrishnan ... Respondents 7 to 9/ Respondents 1 to 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.11 of 2007, dated 15.06.2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Padmanabhapuram.

For Appellant	: Mr.J.S.Murali
For R1 to R6	: Mr.L.Siva for Mr.G.Mohankumar
For R8	: Mr.N.Murugesan
For R7 & R9	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in M.C.O.P.No.11 of 2007, dated 15.06.2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Padmanabhapuram, wherein the respondents 1 to 6 herein have filed petition for seeking compensation due to the death of Govindaraj.

2. The Tribunal has awarded a sum of Rs.4,48,140/- (Rupees Four Lakhs Forty Eight Thousand One Hundred and Forty only) towards compensation along with interest at the rate of 7.5% p.a., from the date of petition till the date of realization. As against the award passed by the Tribunal, the present appeal has been preferred by the appellant/fourth respondent.

3. The brief facts of the averments made in the petition before the Tribunal are as follows:

On 28.07.2005, at about 03.45 p.m, when the deceased Govindaraj was travelling as a pillion rider in Bajaj Kawzhi Motor Cycle bearing Registration No.KL-08-2306 near Arulandh Granites at Muthalakurich, the same was driven by one Ravi in a rash and negligent manner from north to south and dashed against the Hero Honda Motor Cycle bearing Registration No.TN-74-X-4475 which was driven by one Murugesan from south to north. In the said accident, Murugesan died at the sport, Ravi and Govindaraj were taken to Hospital at Parvathipuram and in spite of treatment both of them died on 01.08.2005. The accident had happened only due to the rash and negligent driving of Ravi, who also lost his life due to accident. The deceased

Govindaraj is the elder son of the first petitioner. The respondents 1 and 3 are the owners of the vehicles and the respondents 2 and 4 are the insurers of the vehicles which involved in the accident. All the respondents are liable to pay compensation to the petitioners for a sum of Rs.6,50,000/- (Rupees Six Lakhs Fifty Thousand only).

4. The brief averments made in the counter filed by the 4th respondent are as follows:

The petition is not maintainable either in law or on facts. The petitioners have to prove the manner of accident, age, income and occupation of the deceased. The accident took place due to the negligence on the part of the deceased. The rider of the two wheeler bearing Registration No.KL-08-2306, had no valid driving license on the date of accident. Moreover, the said vehicle No.KL-08-2306 was sold to one Ravi and the registration had expired on 26.10.2004 and it was not renewed on the date on which the accident has occurred on 28.07.2005. The said Motor Cycle was duly insured with the third respondent in the name of D.L.Balakrishnan. Therefore, there is violation of policy condition and thereby the second respondent is not liable to pay any compensation to the petitioners.

5. Before the Tribunal, in order to prove the case of the petitioners, P.W.1 was examined and Ex.P.1 to P.9 were marked. On the side of the respondents, R.W1 to R.W.4 were examined and R.1 to R7 were marked.

6. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.4,48,140/- (Rupees Four Lakhs Forty Eight Thousand One Hundred and Forty only) towards compensation along with interest at the rate of 7.5% p.a., from the date of petition till the date of realization. As against the award passed by the Tribunal, the present appeal has been preferred by the appellant/fourth respondent on various grounds including the liability.

7. The learned counsel appearing for the appellant would contend that the owner of the vehicle bearing Registration No.KL-08-2306 has violated the condition of the policy by allowing the vehicle to ply on the road without Registration Certificate, which expired prior to the date of accident. Further the deceased was travelled as pillion rider and there is no coverage for pillion rider, since the policy is only Act Policy. Further no extra premium was paid

for the pillion rider. Therefore, the appellant is not liable to pay any compensation to the respondents/petitioners. On the side of the appellant/4th respondent, R.W.1 to R.W.4 were examined and documents Ex.R.1 to Ex.R7 were marked. The Tribunal has failed to consider all the aspects in a proper and perspective manner. The Tribunal ought to have exonerated the appellant/Insurance Company. Further the Tribunal failed to consider that the rider of the vehicle bearing Registration No.TN-74-X-4475 only responsible for the accident due to his rash and negligent driving. Therefore, the award passed by the Tribunal is liable to be set aside.

8. The learned counsel appearing for the respondents 1 to 6 would contend that the accident had happened due to the negligence on the part of the driver of the 9th respondent/third respondent and the said vehicle was insured with the appellant/fourth respondent on the date of accident and the said policy was in force. Therefore, the appellant/fourth respondent being insurer of the vehicle is liable to pay compensation. As far as the petitioners are concerned, the deceased is a third party and thereby, the Tribunal after elaborate discussion fairly come to a conclusion and awarded compensation, thereby the present appeal is liable to be dismissed.

9. The learned counsel appearing for the 8^{th} respondent would contend that the accident took place due to the negligence on the part of the driver of the 9^{th} respondent/third respondent and the FIR also registered as against the driver of the 9^{th} respondent and the police also investigated the case and file a final report as against the driver of the 9^{th} respondent. Therefore, the accident has occurred due to the negligence on the part of the 9^{th} respondent driver. The Tribunal after taking into consideration all these aspects correctly fixed the liability and thereby, the petition is liable to be dismissed as against the 8^{th} respondent.

10. This Court, after hearing learned counsel appearing on either side and perusing the documents, including the order of the Tribunal, frames the following point for determination in this appeal:

(1) Whether the accident took place due to the negligence on the part of the driver of the first respondent?

(2) Whether there is a coverage for pillion rider?

(3) Whether the fourth respondent/Insurance Company is liable to pay compensation to the petitioners?

(4) Whether the appeal is liable to be allowed or not?

Point No:1

11. In this case the petitioners in the main petition have filed the petition for compensation for the death of one Govindharaj who travelled in the 3rd respondent vehicle as Pillion rider. The accident took place due to the negligence of the rider of 4th respondent vehicle. In order to prove the negligence P.W.1 was examined and she deposed about the negligence on the part of the driver of 3rd respondent vehicle. There is no contra evidence adduced in respect of negligence aspect. In the absence of contra evidence the petitioners side evidence is acceptable. Further FIR also registered as against the rider of 3rd respondent vehilce. Therefore, the petitioner proved the negligence of 3rd respondent driver.

Point Nos.2 and 3:

12. In this case, the appellant contention is that the deceased has travelled as pillion rider in the two wheeler and the policy is Act Policy and there is no separate premium paid for pillion rider and thereby there is no coverage for the pillion rider. Therefore, the appellant/4th respondent is not liable to pay compensation to the petitioners. But according to the

respondents 1 to 6, the deceased is a third party to the Insurance Company and since the vehicle was insured with the appellant/4th respondent on the date of accident he is liable to pay compensation to the petitioners.

13. In this case it is an admitted fact that the deceased had travelled as pillion rider in the motor vehicle and there is no separate premium paid for pillion rider and the policy is Act Policy. The pillion rider cannot be treated as a third party. Since the deceased travelled as pillion rider and the policy is Act Policy and no separate premium was paid for pillion rider the Insurance Company cannot be fastened liability.

14. In this case there is no dispute in respect of the quantum of the amount and there is no appeal filed by the claimants in respect of the quantum of the amount. Therefore, the order of the Tribunal and in respect of the liability is liable to be modified.

15. The learned counsel appearing for the appellant has also relied upon the judgment of the Division Bench of this Court in ***2024 (1) TN MAC 34 DB (National Insurance Company Limited vs. Mahalakshmi).*** On a

careful perusal of the said judgment it will not be applicable to the present facts of the case, because in the case the Hon'ble Division Bench of this Court discussed about the Insurance coverage for borrower of the vehicle but in this case the deceased was travelled as pillion rider.

16. At this juncture the learned counsel appearing for the respondents has drew the attention of this Court that the Hon'ble Supreme Court in the case of ***Mohana Krishnan S. Vs. K.Balasubramaniyan and others,*** in ***(2022 Live Law (SC) 726*** while discuss about the pillion rider observed that the question as to whether the 3rd party includes all other persons other than the insured, who is the first party and the insurer, who is the 2nd party. Therefore, all other persons who are neither the insured nor the insurer will be 3rd party and will be covered by the Act only policy, we have prima facie reservation about the view expressed. Such question is required to be determined authoritatively. Therefore, the matter was referred for larger Bench. Therefore, as observed by the Hon'ble Supreme Court the matter is under consideration of the Hon'ble Supreme Court while so this Motor Vehicle Act being the benevolent legislation has to be applied in favour of the victims and since the matter is pending before the Hon'ble Supreme Court till the decision

taken by the Hon'ble Supreme Court the Insurance Company can be fastened liability under the doctrine of pay and recovery.

Point No.4:

17. The trial Court after analyzing the evidences partly allowed the petition and awarded compensation by directing the appellant/4th respondent to pay the award amount. The trial Court relied upon the circular of Insurance Company for the motor standard package policy, but in the case on hand, it is Act policy, therefore the trial Court order in respect of fastening the liability on the ground of the circular issued by the Insurance Company is unsustainable and the same is liable to be set aside. However, in the previous point this Court discussed about the liability of the Insurance Company based on the judgment of the Hon'ble Supreme Court and came to a conclusion that pay and recovery can be ordered. Therefore, in view of the said discussions, the order of Tribunal is liable to be modified in terms of the said discussions.

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the order passed by the Tribunal in M.C.O.P.No.11 of 2007, dated 15.06.2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Court,

Padmanabhapuram.is modified to the effect that the respondents 1 to 6/ petitioners are entitled to award amount of Rs.4,48,140/- (Rupees Four Lakhs Forty Eight Thousand One Hundred and Forty only) towards compensation along with interest as ordered by the Tribunal and the appellant/fourth respondent is directed to pay the award amount with interest as ordered by the Tribunal within a period of two months from the date of receipt of a copy of this order and the appellant/4th respondent is at liberty to recover the same from the 9th respondent/third respondent after satisfying the amount to the petitioners. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

22.02.2024

2/2

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To
1. The Motor Accidents Claims Tribunal,
Subordinate Court,
Padmanabhapuram.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

P.DHANABAL,J.

ebsi

C.M.A(MD)No.15 of 2013

22.02.2024
2/2