BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.600 to 602 of 2019
and
C.M.P(MD)Nos.7312, 7314 & 7315 of 2019

C.M.A(MD)No.600 of 2019:

The New India Assurance Company Limited,
Door No.182/22/L, S.N.High Road,
Tirunelveli Junction. ... Appellant/2nd Respondent

Vs.

Uruthamadathy (Died)

1.Karuppayee

2.Uruthamadathi

3.Ramalakshmi

4.Narayanan ... Respondents/Petitioners

5.Muthupandian ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the judgment and decree in M.C.O.P.No. 280 of 2017, dated 29.03.2019 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tirunelveli and allow the appeal.

For Appellant : Mr.J.S.Murali

For R2 : Mr.G.Karthikeyan

For R1 & R3 : No Appearance

For R5 : Mr.V.Sasikumar

C.M.A(MD)No.601 of 2019:

The New India Assurance Company Limited,
Door No.182/22/L, S.N.High Road,
Tirunelveli Junction. ... Appellant/2nd Respondent

Vs.

1.Uruthumadathi (Died) ... Respondent/Petitioner

2.Muthupandian ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the judgment and decree in M.C.O.P.No. 281 of 2017, dated 29.03.2019 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tirunelveli and allow the appeal.

For Appellant : Mr.J.S.Murali

For R1 : No Appearance

For R2 : Mr.V.Sasikumar

C.M.A(MD)No.602 of 2019:

The New India Assurance Company Limited,
Door No.182/22/L, S.N.High Road,
Tirunelveli Junction. ... Appellant/2nd Respondent

Vs.

1.Latha ... Respondent/Petitioner

2.Muthupandian ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the judgment and decree in M.C.O.P.No. 282 of 2017, dated 29.03.2019 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tirunelveli and allow the appeal.

For Appellant : Mr.J.S.Murali
For R1 : Mr.G.Karthikeyan

For R5 : Mr.V.Sasikumar

COMMON JUDGMENT

The present appeals have been filed by the insurance company challenging the common award passed in M.C.O.P.Nos.280, 281 & 282 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Tirunelveli challenging the order of pay and recovery.

2. M.C.O.P.No.280 of 2017 has been filed by the legal heirs of the deceased person. The other 2 claim petitions have been filed by the injured claimants. The deceased and the injured persons have travelled as a passenger in a car owned by the 1st respondent in the claim petition which was insured with the 2nd respondent. The case of the claimants is that the driver of the car had driven the vehicle in a rash and negligent manner and dashed against a bridge. In the said accident, one of the passengers had passed away and the other 2 passengers have sustained grievous injuries. The claimants have prayed for compensation amount from the owner to be indemnified by the 2nd respondent insurance company.

3. The insurance company has filed a counter taking a specific stand that the policy is an Act Policy and therefore, it does not cover the passengers of the private car. The tribunal after considering the evidence on either side has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the 1st respondent. However, it proceeded to hold that the policy marked as Exhibit R.1 does not disclose whether the policy covers the passengers in the private car or not. The tribunal relied upon a column in the insurance policy that it permits 4 passengers along with a driver. When the

insurance policy refers to 4 passengers, the tribunal was of the opinion that all the 4 passengers are covered by the insurance policy. Based upon the above said finding, the tribunal has directed the insurance company to pay the compensation amount to satisfy the award and thereafter, recover the same from the owner of the offending vehicle. Challenging the said order of pay and recovery, the present appeals have been filed by the insurance company.

4. According to the learned counsel appearing for the insurance company, the policy relating to the private car owned by the 1st respondent will clearly disclose that it is a private car Liability Only Policy. Therefore, it does not cover the passengers in the said private car. He further pointed out that the number of passengers permitted in the 4 wheeler does not mean that all of them are covered in the insurance policy unless additional premium is paid by the concerned owner of the vehicle. Hence, he prayed for deleting the portion of the award which directs the insurance company to satisfy the award and thereafter, recover the award amount from the owner of the vehicle. He prays for exonerating the insurance company.

5. Per contra, the learned counsel appearing for the respondent herein had contended that the deceased as well as the injured persons have travelled in the car only as passengers. When the permitted

occupancy of the car is 4+1, certainly the insurance policy covers the passengers also. Hence, he prayed for sustaining the order of pay and recovery passed by tribunal.

6. I have carefully considered the submissions made on either side and perused the material records.

7. The policy of the car has been marked as Exhibit R.1. A perusal of the policy clearly indicates that it is a Liability Only Policy and the premium has been paid only to cover the 3rd party. It is not a comprehensive policy. The Hon'ble Division Bench of our Court in a judgment reported in ***2022 ACJ 339 (Branch Manager, New India Assurance Co. Ltd., Vs. G.Sumathi & Others)*** had held that when the policy of a motor vehicle is an Act Only Policy, it does not cover the occupants of the car. In view of the above said categorical judgment of Division Bench of our High Court, this Court is of the considered opinion that the tribunal was not right in ordering pay and recovery. Only when there is a coverage and there is violation of policy conditions or permit conditions, the question of pay and recovery would arise. When there is no coverage at all, the question of pay and recovery would not arise.

8. In view of the above said circumstances, the award of the tribunal mulcting the liability upon the insurance company and thereafter, recover the same from the owner of the vehicle hereby is set aside. The appellant / insurance company is exonerated from the liability. However, the liability fastened upon the owner of the vehicle / 1st respondent in all the claim petitions is hereby confirmed. The quantum of award is also confirmed. In all other respects, the award of the tribunal stands confirmed.

9. With the said observations, this Civil Miscellaneous Appeals are partly allowed to the extent as stated above. The tribunal is directed to refund the entire award amount along with accrued interest to the insurance company in all the claim petitions. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

24.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court,
Tirunelveli.

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

R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)Nos.600 to 602 of 2019

24.04.2024