BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 04.12.2023

Delivered On : 22.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.283 of 2018
and
C.M.P.(MD)No.4051 of 2018

Iffco-Tokio General Insurance Company,
North Bye Pass Road,
Vannarpettai,
Tirunelveli. ... Appellant

Vs.

1.Meena
2.Minor Sivasakthi (Died)
(Amended vide separate sheet)
3.Minor Manikandan
(2^{nd} & 3^{rd} minor petitioners are represented
by next friend and mother the first petitioner herein)
4.Minor Yogesh ... Respondents
(Represented through his maternal
Grand mother/next friend and guardian the
First respondent herein)
(Respondent 4 is brought on record
as legal heir of the deceased 2^{nd} respondent
vide Court order dated 08.08.2023 made
in C.M.P.(MD)Nos.6845 and 6846 of 2023 in

C.M.A.(MD)No.283 of 2018 by KMSJ)

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed by the learned Additional District Judge/Motor Accidents Claims Tribunal of Tenkasi in M.A.C.T.O.P.No.13 of 2017 dated 05.10.2017.

For Appellant	: Mr.V.Sakthivel
For R1	: Mr.S.Ramesh
For R3 & R4	: Minor
For R2	: Died

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/respondent, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal (Additional District Judge), at Tenkasi in M.A.C.O.P.No.13 of 2017 dated 05.10.2017.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.A.C.O.P.No.13 of 2017.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

The petitioners are legal heirs I.e. Wife and minor children of the deceased namely Mehanathan. On 22.06.2011 at about 04.00 p.m., the deceased Mehanathan while riding his two wheeler TVS Jive bearing registration No.TN-76-W-3825 from Puliyangudi to Madurai Main road near Navva Salai at Ratnapurai village, a dog suddenly crossed the said motorcycle. As the result of which, the deceased applied sudden break and the motorcycle dashed against a Navva tree in the left side. The deceased sustained severe fracture injuries and died on the same day in the Government Hospital, Puliyangudi. Seeking compensation of Rs. 20,00,000/- for the death of the deceased, the legal heirs of the deceased have filed the claim petition.

4.The respondent is the insurance company with which the vehicle was insured. The respondent had filed a counter refuting each and every allegations set forth in the claim petition.

5.The learned Tribunal has framed two issues. On the side of the petitioners, two witnesses P.W.1 & P.W.2 were examined and Ex.P1 to Ex.P6 were marked. On the side of the respondent, three witnesses R.W.1

to R.W.3 were examined and Ex.R1 to Ex.R4 were marked. On the basis of oral and documentary evidence and on the basis of arguments put forth by respective parties, the learned Tribunal proceeded to conclude that the the accident took place only because of the sudden entry of dog which necessitated the deceased to apply brake abruptly, as the result of which, he lost his control over the vehicle and dashed against Nava tree and sustained grievous injuries. The learned Tribunal was pleased to conclude that the accident had happened only due to sudden crossing of the dog and not due to the negligence of the motorcycle rider.

6.On the basis of post morterm report, the learned Tribunal fixed the age of the deceased as 45 years. Though the claimants claimed that the deceased earned Rs.12,000/- per month by running a petty shop, a notional income of Rs.9,000/- was arrived at by the learned Tribunal. Since the deceased was aged above 40 years and below 50 years at the time of death, 30% was to be added towards future prospects. Hence, the monthly income was arrived as Rs.12,000/- [Rs.9,000+Rs. 3,000(9,000x30%)]. As per the dictum laid down by the Hon'ble Apex Court in the case of ***Sarala Varma and others v. Delhi Transport***

Corporation and others reported in ***AIR 2009 (SCC) 3104*** , 1/3 of the income has to be deducted towards personal expenses of the deceased and hence, the contribution towards his family was Rs.8,000 [Rs. 12,000-4,000 (12,000x1/3)]. As per ***Sarala Verma*** case, the appropriate multiplier '14' was adopted and the loss of dependency was arrived as compensation at Rs.13,44,000/- (Rs.8,000x12x14). The learned Tribunal has passed the award under following heads:-

Head	**Compensation awarded**
(I)Loss of Dependency:	Rs.13,44,000/-
(ii)Loss of Estate:	Rs.10,000/-
(iii)Loss of Spousal Consortium:	Rs.1,00,000/-
(iv)Loss of love and affection to the petitioners 2 and 3 each:	Rs.1,00,000/-
(v)Funeral and Transportation Expenses:	Rs.25,000/-
Total compensation awarded:	Rs.15,79,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

7.Challenging the same, the appellant/respondent has preferred this Civil Miscellaneous Appeal.

8.The learned counsel appearing for the appellant/respondent vehemently contended that the contract of insurance company in respect of the vehicle bearing registration No.TN-76-W-3825 has been entered into between the deceased Meganathan and the appellant/respondent insurance company, by which the appellant/respondent insurance company has agreed to indemnify the deceased Meganathan in respect of any third party claim and also the damages to the vehicle in the event of an accident. However, the deceased Meganathan was not at all a third party. In fact the deceased Meganathan was one of the party to the insurance contract. After the death of such Meganathan, the legal heirs of the deceased have became the owners of the insured vehicle and therefore, they cannot act as claimants and they are not the persons liable to be paid with compensation. He further vehemently contended that liability of the insurance company is only for the purpose of indemnifying the insurer against the liabilities incurred towards the third persons or in respect of damages to the property as held in ***Oriental Insurance Company Limited v. Sunitha Rathi*** reported in ***1998 ACJ 121***. The owner himself being a tort feasor is not entitled for compensation and he is entitled for personal accident coverage of Rs.

1,00,000/- alone.

9.Per contra the learned counsel for the third respondent/first petitioner submitted that the deceased Meganathan entered into contractual insurance with the appellant/respondent insurance company, which is a package policy. He had paid separate premium for the PA cover for the owner/rider of the motorcycle and the said payment has not been disputed by the said insurance company. The said insurance policy has produced by the appellant/respondent insurance company has been marked as Ex.R4 before the learned Tribunal. On bare perusal of the package policy, it would reveal that it is package policy. Hence, it is a compulsory accident package cover for owner/driver.

10.In the instant case, the deceased died in an accident while driving the two wheeler and the insurance policy has been marked as Ex.R4 and a perusal of the same would reveal that the same is not an act policy but a package policy, for which separate premium for PA cover for owner/rider of the motorcycle vehicle has been paid.

11.The Hon'ble Apex Court in the case of ***New India Assurance Company Limited v. Prabha Devi and others*** reported in ***2013 ACJ 1382***, has dealt with a similar case and the relevant portion of which is extracted as follows:-

> *"Mr. Vishnu Mehra, learned counsel for the appellant in Civil Appeal No. 479 of 2007 has submitted that the MACT as well as the High Court have erred in granting any compensation to the legal representatives in view of Section 147 of the Act. He submits that in similar circumstances, this Court in the case of Dhanraj versus New India Assurance Company Limited and another reported in (2004) 8 SCC 553 has clearly held that the liability of the Insurance Policy is only for the purpose of indemnifying the insured against the liabilities incurred towards a third party or in respect of damages to property. Therefore, since the deceased himself was the insurer as well as the owner of the vehicle, no amount of compensation could have been awarded to the claimants.*
>
> *We have perused the judgment of this Court in the case of Dhanraj Supra. In that case, the appellant who was the insurer was travelling in the insured vehicle, which met with an accident. In the accident, the appellant as well as the other passengers received injuries. A number of claim petitions came to be filed. The appellant who was the insurer also filed a claim*

petition. The MACT held the driver of the Jeep responsible for the accident. In all the claim petitions filed by the other passengers, MACT directed that the appellant (the owner) as well as the driver and the Insurance Company were liable to pay compensation. Furthermore, in the claim petition filed by the appellant, the MACT directed the driver and the Insurance Company to pay compensation to the appellant. The aforesaid finding of the MACT was upheld by the High Court in the appeal filed by the Insurance Company. The Insurance Company was, in appeal before this Court challenging the judgment of the High Court awarding compensation to the owner of the insured vehicle. Taking into consideration the provision contained in Section 147 of the Act, this Court observed as follows :-

"8. Thus, 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. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

9.In the case of Oriental Insurance Co. Ltd. versus Sunita Rathi it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against *liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.*

10.In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4989 paid under the heading "Own damage", the words "premium on vehicle and nonelectrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance."

In view of the aforesaid ratio of law, the claim made by the respondents could not have been allowed. Consequently, Civil Appeal No. 479 of 2007 is allowed. The impugned Award as well as the impugned judgment of the High Court are set aside."

12.The Hon'ble Division Bench of this Court in the case of ***New India Assurance Company Ltd., v. Latha and others*** reported in ***2018 1 TNMAC 466***, has dealt with similar lines and the relevant portion of which is extracted as follows:-

7.The only point that revolves in this appeal is whether liability covered under the said policy is for unlimited amount or limited to as per the terms of the special contract entered into between the insurer and the insured under the policy.

8.The Hon'ble Supreme Court in Bhagyalakshmi and others v. United Insurance Company Ltd., and another reported in (2009) 7 SCC 148 held that package policy / comprehensive policy covers the pillion rider and the occupants of the car and the owner who was also occupant (not driving at that time) is entitled to compensation as per the terms of the policy placed in that case. The matter was then referred to the Larger Bench to decide as to what would be the liability of the insurer if the policy is a "comprehensive / package policy".

9.The above decision in Bhagyalakshmi's case (cited supra) was rendered by the Hon'ble Supreme Court on 06.05.2009. In a subsequent decision rendered on 20.11.2012, the Hon'ble Supreme Court in National Insurance Co., Ltd., v. Balakrishnan reported in (2013) 1 SCC 731, has held as follows :

"26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA,

which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in Bhagyalakshmi [(2009) 7 SCC 148 : (2009) 3 SCC (Civ) 87 : (2009) 3 SCC (Cri) 321] and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

10.The learned counsel appearing for the appellant cited the Hon'ble Supreme Court Judgment in Oriental Insurance Co., Ltd., v Rajini Devi, reported in 2008 ACJ 1441 and contended that the insurance company is liable to pay only the agreed sum of Rs.1,00,000/- to the claimants, as per the policy. In the above ruling, it has been held as follows :

"6. It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the

contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof."

11.The coverage for third party is statutory as per Section 146 of the Motor Vehicles Act, 1988. Personal Accident cover to the owner by paying additional premium is purely contractual and nonstatutory. The insurance company is liable to pay only to the extent as agreed under the contract.

12.As per the terms of the policy, Personal Accident claim to the owner is limited to Rs.1,00,000/- for the two wheeler. Therefore as per the contract, the claimants are entitled to get compensation of Rs.1,00,000/- from the insurance company. For the aforesaid reasons, the award of the Tribunal is liable to be modified by awarding a total compensation of Rs.1,00,000/- to the claimants."

13.It is a settled principle of law that in the case where the owner is involved, the compensation claimed by the legal heirs for the death of owner, the contract of insurance has been governed by contract quo contract. In the instant case, the deceased had paid a package policy by paying a separate premium personal accident cover for owner/rider. He is entitled for personal accident claim to the owner, which is limited to Rs. 1,00,000/- for the two wheeler. Therefore, as per the contract, the petitioners are entitled to claim the amount of Rs.1,00,000/- from the appellant/respondent insurance company.

14.For the aforesaid reasons, the award of the learned Tribunal is liable to be modified by awarding the total compensation of Rs. 1,00,000/- to the petitioners. The first petitioner/major claimant is entitled to Rs.50,000/- and the third petitioner/minor claimant is entitled to Rs.50,000/-. Since the second respondent herein/second petitioner died, the fourth respondent herein was impleaded as legal heir of the deceased second petitioner by this Court vide an order dated 08.08.2023. The fourth petitioner is not entitled for compensation as he is not Class I legal heir of the deceased and he is the grandson of the deceased.

15.The appellant/respondent insurance company is directed to pay the compensation of Rs.1,00,000/- along with accrued interest at the rate of 7.5% to the petitioners/claimants from date of the claim petition till the date of realization within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the major claimant is permitted to withdraw her respective share after deducting any amount received by her earlier without filing any formal petition before the Tribunal. Insofar as the share of the minor claimant/third respondent is concerned, the Tribunal is directed to deposit the same in a Fixed Deposit under a periodically renewable scheme till they attain majority and the first petitioner, the Guardian of the minor, is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minor. The appellant/respondent insurance company are entitled to withdraw the excess amount, if any. The petitioner/claimant is not entitled for interest for the default period, if there is any.

16.Accordingly, the Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

L.VICTORIA GOWRI, J.

Mrn

To
1.Motor Accident Claims Tribunal
Additional District Judge,
Tenkasi.
2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

C.M.A.(MD)No.283 of 2018

22.01.2024