

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2021

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A.No.1565 of 2020

and

C.M.P.No.11557 of 2020

The New India Assurance Co. Ltd.,
20B, Erode Kankeyam Main Road,
Avalpoondurai.

... Appellant

vs.

1. K. Parvathi
2. K.K. Kolandasamy
3. K. Suresh
4. P. Gowthaman @ Suresh

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 07.12.2019 made in M.C.O.P.No.17 of 2017 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

For Appellant : Mr.M.Krishnamoorthy

For R1 to R3 : Mr.N.Manokaran

For R-4 : Served – No appearance

JUDGMENT

This appeal has been filed by the Insurance Company, challenging the Award dated 07.12.2019 passed by the Motor Accident Claims Tribunal, Special District Judge, Erode in M.C.O.P.No.17 of 2017, directing the appellant/Insurance Company to pay the Claimants a sum of Rs.14,65,800/- as compensation for the death of the deceased Sadayappan @ Dhanapal due to the accident, which occurred on 03.08.2016. The Tribunal has awarded compensation of Rs.14,65,800/- on the ground that the entire policy conditions have not been produced by the Insurance Company. Respondent Nos.1 to 3 / Claimants are the dependants of the deceased viz. Sadayappan @ Dhanapal.

2. The accident occurred on 03.08.2016 at about 4.00am at Pennagaram to Hogenakkal Main Road. After the accident, a Criminal Case was registered by the Hogenakkal Police Station on the basis of the complaint given by one Lingeshwaran, who travelled in the car, witnessed the accident and was examined as P.W.2. In the F.I.R., it has been stated that on 02.08.2016, the 4th Respondent herein by name Gowthaman and his friends went for a tour to Hogenakkal in a Qualis Car bearing Reg.No.TN-

49-H-1913 and that on 03.08.2016, the 4th Respondent, who is the owner of the said Car had driven the Car towards Pennagaram to Hogenakkal Road. The deceased Sadayappan @ Dhanapal, who is said to be the driver of the car was sitting in the car along with other friends. When the car reached near Hogenakkal around 4.00 a.m., on account of the rash and negligent driving of the car by the 4th Respondent, he, who lost control, dashed against a tree planted on the left side of the road. As a result, one Sugumar and the deceased Dhanapal @ Sadayappan sustained grievous injury and died on the spot and that others suffered serious injury. From the F.I.R., it is very clear that the car was driven by the 4th respondent herein.

3. Before the Tribunal, a different / dramatic stand was taken that the deceased Sadayappan @ Dhanapal was an Engineering graduate and was employed as a Driver under the 4th Respondent for a salary of Rs.15,000/- per month. As per the statement of the complainant / Lingeshwaran, the deceased Dhanapal had driven the Car from Elavanatham and on 03.08.2016 early morning, due to tiredness, he handed over the Car to the 4th respondent / owner of the car and that while he was driving the Car, the

accident took place and in the accident two persons died and others suffered injury.

4. The Insurance Company took a stand before the Tribunal that the policy taken was 'Act only' (otherwise known as 'third party') policy and that as per the policy, the Driver-cum-Owner would be entitled to a sum of Rs.1,00,000/- and for the purpose of claiming compensation, it has been stated in the Claim Petition that Sadayappan @ Dhanapal was driving the Car. It was further stated by the Insurance Company that the deceased Sadayappan @ Dhanapal was not at all a driver of the vehicle at the time of accident, as the vehicle was originally driven by the 4th respondent herein.

5. The Tribunal, after analyzing the evidence on record, came to the conclusion that the entire policy conditions in respect of the car have not been produced by the Insurance Company and that the premium for a sum of Rs.5,081/- was paid as T.P. Premium. Unless or otherwise the entire policy conditions have been produced, it would be very difficult to analyze as to whether the Insurance Company is liable to pay the compensation or not.

Though the Tribunal is entitled to take a different view from the F.I.R., which is based on the evidence, the F.I.R. can be looked into for the purpose of corroboration or contradiction.

6. As per the Policy, the owner-cum-driver alone is entitled to compensation. Even going by the policy, it is very clear that it is a Private Car Liability Policy, wherein the third party premium has been paid as Rs.5,081/- and not even a pie has been paid as premium for the passengers. Firstly, the driver, who is said to have driven the vehicle before the accident was not the owner of the vehicle. Secondly, the 4th Respondent had driven the vehicle and not the person, who died in the accident. As no income proof has been produced by the Claimants, the Tribunal, on the basis of the Driving License of the deceased Dhanapal had fixed his monthly salary as Rs.9,000/- and foisted the liability on the Insurance Company taking the age as 25 years based on the date of birth given in the Driving License.

7. Learned counsel for the Appellant / Insurance Company relied upon the following judgment of this Court in support of his submission that the Insurance Company need not pay any compensation, where a vehicle is

covered under 'Act only' policy:

i) *The Branch Manager, The New India Assurance Co. Ltd. vs. G. Sumathi and Others*, reported in **2021 1 TNMAC 620**;

“13. We have heard the learned counsel for both sides and perused the materials placed on record. As per the averments of the claimants, the car, in which the deceased, PW 1 and others travelled on the fateful day, capsized, after hitting the centre median divider in the road. It is also an admitted fact that the rear side tyre of the car bursted when the car was proceeding near Kandampatti at Salem. It is also an admitted fact that no other motor vehicle is involved in the accident. It is in such an accident, due to capsizing of the car and its impact, the deceased sustained grievous bleeding injuries and he died as a result of such injuries. Thus, it is an undisputed fact that the deceased was one of the occupants of the car and he is not a third party as defined in the terms and conditions of the Insurance Policy under Ex. R-1. When the deceased is not a third party, the Insurance Policy cannot get extended to cover the risk of such occupants of the car. Furthermore, it is substantiated by the appellant that the Insurance Policy in question is only an "Act Policy", which will cover only the risk that may be confronted by a third party to the vehicle and not to the occupant of the vehicle. The coverage for an occupant of the vehicle can be extended upon payment of additional premium by the owner of the car. In the present case, even as admitted by the claimants, the owner of the car has not remitted any additional premium to cover the risk that may be confronted by the occupants of the car. In such circumstances, we are of the view that the Tribunal erred in mulcting the appellant/Insurance Company with the liability to pay the compensation to the claimants.

14. Even though several decisions were relied on by the learned counsel for the appellant in this appeal, we are fortified

by the decision of the Supreme Court in the case of United India Insurance Co. Ltd. Vs. Tilak Singh and others, reported in MANU/SC/8088/2006 : 2006 (4) Supreme Court Cases 404 : 2006 (1) TN MAC 36 (SC). In that case, the issue that had arisen for consideration of the Supreme Court is whether a statutory Insurance Policy under the Motor Vehicles Act, 1998, intended to cover the risk to life or damage to properties of third parties, would cover the risk of death or injury to a gratuitous passenger carried in a private vehicle. The Supreme Court in that case held that the Insurance Company owe no liability towards the injuries suffered by a pillion rider, as the insurance policy was a statutory policy and it does not cover the death of or bodily injury to a gratuitous passenger. The ratio laid down by the Supreme Court in the said decision, squarely applies to the facts of this case. In the present case, the Policy in question is an "Act Policy" and in the absence of remittance of any additional premium by the owner of the car, the appellant/Insurance Company cannot be statutorily made liable to pay the compensation for the deceased, who was an occupant of the car.

15. As we have held that the appellant/Insurance Company is not required or statutorily liable to pay compensation to the respondents 1 to 4/claimants, there is no necessity for us to go into the question relating to quantum of compensation, particularly when the owner of the vehicle has not chosen to appear before this Court.

16. In the light of the above, we set aside the Judgment and Decree dated 14.09.2018 passed in M.A.C.T.O.P. No. 552 of 2015 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Namakkal and exonerate the appellant/Insurance Company from their liability to pay the compensation amount to the respondents 1 to 4/claimants. It is open to the respondents 1 to 4/claimants to proceed against the owner of the Car/fifth respondent herein to recover the

compensation amount for the death of the deceased. The Civil Miscellaneous Appeal filed by the appellant-Insurance Company is allowed to the extent indicated above. No costs. Consequently, C.M.P. No. 20788 of 2019 is closed.”

8. Learned counsel for the Respondents / Claimants contended that the award of the Tribunal is fair and justifiable, as the Tribunal had analyzed various factors and awarded the amount. Hence, the said Award warrants no interference by this Court.

9. Heard the learned counsel for the Appellant and Claimants and perused the material documents available on record.

10. In the present case on hand, not even a pie has been paid towards premium with regard to driver and for other passengers, who are going to travel in the vehicle. That apart as stated earlier, the stand taken in the Claim Petition filed before the Tribunal was in total contra to the contents in the F.I.R., marked as Exhibit-A1 on the side of the Claimants. That being the case, the Tribunal completely erred in granting compensation only on the ground that the conditions of the policy have not been produced. In fact, the Tribunal should have rejected the claim petition for non-filing of the

details of the Policy by the Claimants, as it was claimants, who had approached the Tribunal, with unclean hands, by taking a different stand. Hence, I am of the view that the award of Tribunal is liable to be interfered with and set aside.

11. Accordingly, *the Civil Miscellaneous Appeal is allowed* and the Award of the Tribunal dated 07.12.2019 made in M.C.O.P.No.17 of 2017 is hereby set aside. It is made clear that this order will not preclude the Claimants and others from claiming compensation for the death of the deceased from the owner of the Car / 4th Respondent herein, who also travelled in the Car along with them, in terms of the judgment of a Division Bench of this Court (supra).

12. Before parting with this judgment, it is saddening to point out that when a vehicle is sold, the purchaser / buyer is not clearly informed about the terms of policy and its importance. Similarly, at the time of buying the vehicle, the buyer is also not interested in thoroughly understanding the terms and conditions of the policy, as he/she is more concerned about the

vehicle's performance and not about the policy. When a buyer is ready to pay a huge amount for purchase of a vehicle, it is really shocking as to why the buyer is not interested in spending a paltry sum to take a policy so as to safeguard himself/herself and others.

13. Therefore, this Court directs that whenever a new vehicle is sold after 01.09.2021, it is mandatory for coverage of bumper to bumper insurance every year, in addition to covering the driver, passengers and owner of the vehicle, for a period of five years. Thereafter, the owner of the vehicle must be cautious in safeguarding the interest of driver, passengers, third parties and himself/herself, so as to avoid unnecessary liability being foisted on the owner of the vehicle, as beyond five years, as on date there is no provision to extend the bumper to bumper policy, due to its non-availability. In view of untoward incidents like the present one on hand, the order shall be circulated by *the Additional Chief Secretary, Transport Department, Chennai*, to all the Insurance Companies and the said Officer must ensure that the above direction is followed scrupulously in letter and spirit without any deviation. No costs.

List this matter for reporting compliance on 30.09.2021.

04.08.2021

Index: Yes / No
Speaking Order: Yes / No
rsi/ar

Note: Issue order copy on 25.08.2021

To:

1. The Motor accident Claims Tribunal,
Special District Court,
Erode.
2. The Additional Chief Secretary,
Transport Department,
Secretariat, St.George Fort,
Chennai - 600 009.
3. The Section Officer,
V.R. Section,
High Court of Madras,
Chennai - 600 104.

S.VAIDYANATHAN, J.

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