

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.2066 of 2009
and M.P.No.1 of 2009

M/s.United India Insurance Company Limited,
Erode. .. Appellant/3rd Respondent

Vs.

1.S.Kaliappan

2.P.Selvaraj

3.K.Muthusamy

[R2 & R3 Ex parte]

.. Respondents/Petitioners
and Respondents 1 & 2

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 21.10.2008 made in OP.No.621 of 2007 on the file of the Motor Accident Claims Tribunal (FTC-III) at Dharapuram.

For Appellant : Mr.T.Ravichandran

For Respondents : Mr.S.Saravanan [for R1]

R2 & R3 - Ex parte]

JUDGMENT

The appellant before this Court is the third respondent/Insurance Company. He challenges the award passed by the Tribunal on the solitary ground that policy does not cover compensation for personal injuries to the claimant.

2.The short facts that are necessary for considering this case is that on 19.03.2007, the claimant while he was riding his motor bike met with an accident when an auto rickshaw bearing registration No.TN33-AD-5856 dashed against it. In the said accident, the first respondent/claimant suffered injuries to his person.

3. Seeking a compensation of Rs.2,00,000/-, the first respondent moved Motor Accident Claims Tribunal at Dharapuram in MCOP.No.621 of 2007. The offending vehicle namely the auto rickshaw was not insured. His driver and owner were arrayed as parties, as respondents 1 and 2. He also added his own insurer who is now before the Court as appellant as the third respondent

before the Tribunal. Against the claim of Rs.2,00,000/-, the Tribunal has awarded Rs.60,000/-.

4. The short point the learned counsel for the appellant raised in this case is that as per EX.P11 policy, which the claimant himself has produced, there is no policy cover for personal injuries suffered by the insured. Therefore, he contended that the Tribunal went wrong in fixing the liability on the appellant when there was no contractual liability as per EX.P11.

5. The learned counsel for the respondent submitted that the Insurance Company has received a premium of Rs.134.10 towards own damages, which implies that the Insurance Company has accepted liability to cover the personal injuries suffered by the rider in the accident.

6. Countering this, the learned counsel for the appellant submitted that any premium received under the head "common damage" cannot cover personal accident insurance and this has been adequately distinguished by judicial pronouncements as in (i) Dhanraj v. New India Assurance Co. Ltd. and Another, [CDJ 2004 SC 1065] : [2004 (8) SCC 553]; (ii) United India Insurance Company Limited, Erode Vs. P.Shanthi & others [CDJ 2011 MHC 3056] : [2011 (1) TNMAC 227 (DB)] (Madras High Court) and (iii) Komeravel Gounder & Others Vs. Bajaj Allianz General Insurance Company, rep. by its Branch Manager & Others [CDJ 2012 MHC 5141] : [2013 (1) TNMAC 120 (DB)] (Madras High Court).

7. On a perusal of the above authorities relied on by the appellant, I am convinced that a premium received on the head "own damage" cannot be equated as insurance cover for personal accident injuries. The authorities categorically made clear that premium collected on own damage is attracted only towards covering the damage suffered by the vehicle and not by the person, such as a rider or driver of the vehicle.

8. In the result, I hold that the appellant is not liable to meet out the award amount as that has been awarded by the Tribunal and consequently the appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed. It is stated that the appellant-Insurance company has deposited the award amount in the Court and it is permitted to withdraw the same. The first respondent/claimant is free to proceed against the owner of the offending auto rickshaw to realise the award amount.

Sd/-

Asst.Registrar

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Sub Asst. Registrar

To:

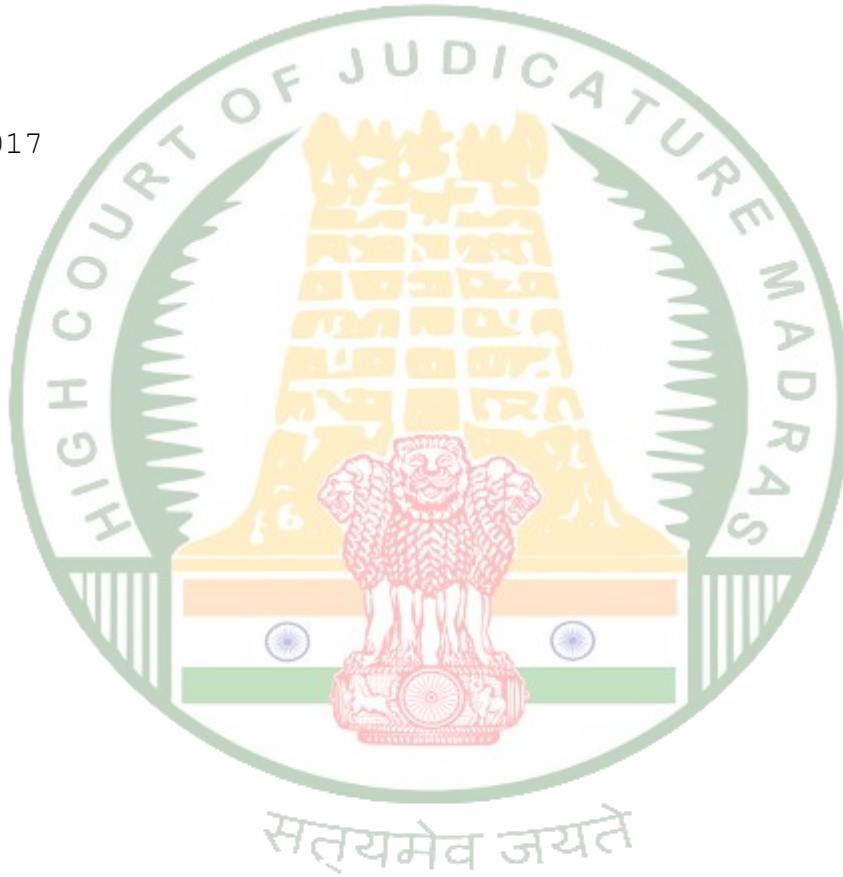
The Motor Accident Claims Tribunal
(Fast Track Court-III) at Dharapuram.

+1 cc to M/s.S.Saravanan Advocate sr 68634

+1 cc to M/s.T.Ravichandran Advocate sr 68021

C.M.A.No.2066 of 2009

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