BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CMA(MD)No.584 of 2016
and
CMP(MD)No.6705 of 2016

The Branch Manager,
M/s.United India Insurance Company Limited,
123 No.2 Road,
Myladuthurai 609 001. ... Appellant/2nd Respondent

vs.

1)Kulanthaivelu ... 1st Respondent/1st Petitioner
2)J.Arunkumar ... 2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 26.03.2015 made in MCOP.No.643 of 2012 on the file of the Motor Accident Claims Tribunal, Principal District Court, Pudukottai.

For Appellant : Mr.A.S.Mathialagan
For R1 : Mr.Joseph Jerry for
Mr.K.N.Govardhanan
For R2 : No Appearance

JUDGMENT

It is the case of injury caused on account of the accident took place on 19.05.2012 around 07.00 p.m on Myladuthurai main road. The injured claimant filed an application seeking compensation before the Motor Accident Claims Tribunal, Principal District Sub Court, Pudukottai, and the Tribunal considering the facts and the circumstances of the case, awarded Rs.5,17,280/-, as total compensation with interest at 7.5% per annum. The appellant insurance company preferred this appeal, on the ground that it is Act only policy and therefore, the Tribunal has committed an error by fixing the liability on the part of the appellant insurance company, instead of fixing liability on the owner of the vehicle.

2.In fact, the policy was marked as Ex.P10, by the claimant himself and the fact regarding marking of the policy was not disputed by the claimant. The findings of the Tribunal are also clear that the policy was marked as document and the same indicates that it is ''Act only policy''. In view of the fact that it is ''Act only policy'', it will not cover the pillion rider in a two-wheeler, which is a private vehicle. Such being the situation, this Court is of the view that the fixation of liability on the part of the appellant insurance company by the Tribunal, is in violation of Section 147(1)(ii) of the Motor Vehicles Act, which states that in order to comply with the requirements of this Chapter, a policy of insurance must be a policy against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place and consequently, the impugned award is liable to be set aside and accordingly, set aside.

3.In the result, this Civil Miscellaneous Appeal is allowed. No costs. The injured victim is entitled to recover the compensation from the owner of the vehicle in the manner known to law. The appellant is permitted to withdraw the entire award amount with proportionate accrued interest, if any, lying in the credit of the claim petition, by filing necessary application before the Tribunal. Consequently, CMP(MD)No.6705 of 2016 is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Motor Accident Claims Tribunal,
Pudukottai.

Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.N.GOVARDHANAN, ADVOCATE IN SR No. 74505
+ 1 CC TO Mr.A.S.MATHIALAGAN, ADVOCATE IN SR No. 73734

NBI
TE/SKS-RR : 27/12/2016 : 2P/5C

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