HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2302 OF 2005

JUDGMENT:

Respondent No.2 - M/s. New India Assurance Company Limited, preferred the instant appeal aggrieved by the order and decree, dated 19-04-2005, in O.P. No.49 of 2003, passed by learned Chairman, Motor Accident Claims Tribunal - cum - District Judge, Nellore (for short 'the Tribunal') awarding a compensation of Rs.1,63,700/- as against the claim of Rs.3,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the injuries sustained by the petitioner in a road accident; mainly on the ground that the pillion rider is not entitled to any compensation since risk is not covered as the policy issued was an 'Act Policy' and not comprehensive policy, but, the Tribunal, somehow, went wrong in awarding compensation and mulcting liability on the Insurance Company overlooking the fact whether risk is covered or not by the policy.

2. Respondent No.2 and the appellant herein, who are owner and insurer of Scooter bearing registration No.AP 26 751, respectively, are respondent Nos.1 and 2, respectively, in O.P. before the Tribunal, while respondent No.1 is the petitioner.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in OP before the Tribunal.

4. The facts are that on 25-02-2002 at about 4.30 p.m., while the petitioner was proceeding from Nellore to Vidavalur as

a pillion rider on a scooter bearing registration No.AP 26 751 belonging to respondent No.1 insured with the respondent No.2, driven by one Siva Sandeep Reddy and when they were proceeding through Penna Bridge, a lorry coming from behind blew horn and in order to give the way to the lorry, rider of the scooter turned to the left side, during which process, it fell aside resulting in injuries to him. He states that he was shifted, initially to Jayabharat Hospital, Nellore, and from there to Apollo Hospital, Madras and, he sought Rs.3,50,000/- as compensation.

5. Respondent No.1, owner of the vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.2 - Insurance Company strongly resisted the claim on the ground that there was no insurance coverage, and that the policy issued was only an 'Act Policy' and in view of the same, the petitioner is not entitled to any compensation.

7. Basing on the said pleadings, the Tribunal

framed the following three issues.

" 1. Whether the accident occurred out of the use of the
motor vehicle of respondent No.1?

2. Whether the petitioner is entitled to compensation? If
so, to what amount and from which of the respondents?

3. To what relief?"

8. During inquiry before the Tribunal, the petitioner examined himself as PW.1, besides examining Dr.V. Balaji Srinivasan as PW.2 and marked Exs.A-1 to A-10. On behalf of Insurance Company, RW.1 was examined and Exs.B-1 and B-2, which are copies of insurance policy and conditions of policy, respectively, were marked.

9. The Tribunal has taken up issue Nos.1 and 2 for common discussion and observing that the Act is a beneficial legislation and placing reliance on the decision rendered by a Division Bench of this Court in **New India Assurance Company Limited v. R.R. Usharani**[1], which was rendered following the decision of the Hon'ble Supreme Court in **Rathi Menon v. Union of India**[2], recorded
a finding that the Insurance Company is liable to pay compensation and determined the compensation at Rs.1,63,700/- fastening joint and several liability on both the respondents.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by respondent No.2 contending in the grounds that the Insurance Company is not liable to pay any compensation as risk was not covered by the policy and, therefore, sought to exonerate its liability.

11. Heard Sri Kota Subba Rao, learned counsel for the appellant - petitioner. None represents respondent No.1 - petitioner despite service of notice. So far as respondent No.2 - respondent No.1 is concerned, as per the memo, it is recorded that he is not a necessary party.

12. Perused the policy. It is an 'Act Policy', which is Ex.B-1, and borne out by Ex.B-2, the conditions of policy. In a fact-situation occurring herein for injuries to the pillion rider, certainly, Insurance Company cannot be made liable when policy is an 'act policy'. The Tribunal, somehow, without properly examining that issue just carried away on the premise that the Act is a beneficial legislation and risk of the pillion rider will also come under the purview of the Act. However, the decision relied on by the learned counsel for the appellant in **United India Insurance Company Limited v. Tilak Singh**[3], rendered by the Hon'ble Supreme Court, wherein in a similar fact-situation where the policy was an 'act policy', it was held

that the pillion rider is not entitled to compensation as the risk of the pillion rider is not covered by an 'act policy'. In view of the same, the order of the Tribunal under challenge is set aside so far as the appellant - respondent No.2 in the OP is concerned, however, maintaining in all other respects so far as liability of respondent No.2 - respondent No.1 in the OP is concerned.

13. As per the proceeding sheet, on 10-04-2006, this Court while making interim stay earlier granted absolute, permitted respondent No.1 - petitioner to withdraw proportionate amount as well as entire costs and interest as directed by the Tribunal without furnishing any security. In that view of the matter, if any amount had already been withdrawn by the respondent No.1 - petitioner, the appellant - respondent No.2 is at liberty to recover the same from the respondent No.1 in the O.P., owner of the vehicle; for the balance compensation amount, the petitioner is entitled to recover the same from the owner of the vehicle, respondent No.1 in the OP.

14. To the extent indicated above, the appeal is allowed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

June 29, 2016.
Mgr

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[1]. 2004 (1) ALT 401 (DB)
[2]. 2001 (2) Supreme 314 = AIR 2001 SC 1333
[3]. 2006 ACJ 1441 (SC)