

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.03.2017

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.1210 of 2011

and

M.P.No.1 of 2011

Iffco Tokio General Insurance Company Limited,
Thulasi Chambers, 3rd Floor,
No.195, T.V.Swamy Road,
R.S.Puram, Coimbatore.

... Appellant/ 2nd Respondent

.. Vs ..

1.Ranjith

2.Mani

..

Respondents

(2nd Respondent exparte in Lower Court and
hence notices may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act 1988, against the judgment and decree
dated 25.10.2010 made in M.C.O.P.No.455 of 2008 on the file of
the Motor Accidents Claims Tribunal, Subordinate Court,
Sankagiri.

For Appellant : Ms.Harini

for M/s.N.Vijayaraghavan

For Respondent :Mr.C.Kulanthaivelu for R1

Exparte for R2

JUDGMENT

This civil miscellaneous appeal is directed against the
judgment and decree dated 25.10.2010 made in M.C.O.P.No.455 of
2008 on the file of the Motor Accidents Claims Tribunal,
Subordinate Court, Sankagiri.

2. The brief facts of the case are as follows:-

On 10.02.2008 at about 03.00 a.m., the petitioner
was going near KSR College Main gate, Tiruchegodu to
Pallipalayam Main Road, by a vehicle bearing Registration
No.TN-34C-3062 (Yamaha Crux) as a pillion rider. At that
time, the rider the above vehicle bearing registration No.TN-
34C-3062 (Yamaha Crux), drove the vehicle in a rash and
negligent manner and applied sudden break and the petitioner
fell down on the ground and sustained injuries on the head,
legs, hands and face and immediately, he was taken to Erode
Senthil Hospital and thereafter, was shifted to Ganga Medical
Centre and Hospital, Erode and admitted as an inpatient from
10.02.2008 to 26.02.2008 and given treatment for his injuries.

The Tiruchengode Rural Police Station have registered a Criminal case in Cr.No.74 of 2008 under sections 279, 337 and 338 of IPC and the same is pending before the Tiruchengode Judicial Magistrate Court. The 1st respondent's vehicle has been insured with 2nd respondent. Hence, claiming a sum of Rs.5,00,000/- of the deceased had filed a petition for compensation. The Tribunal, after considering the evidence adduced by both parties, finally awarded a sum of Rs.2,21,661/- towards compensation and directed the appellant/Iffco Tokio General Insurance Company Limited to deposit the said compensation amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved against the said award passed by the Tribunal, the present appeal is preferred by the appellant/ Iffco Tokio General Insurance Company Limited.

3. The learned counsel for the appellant/ Iffco Tokio General Insurance Company Limited, would mainly contend that the Trial Court without considering that the claimant is a pillion rider has erroneously passed the award. The learned counsel would further submit that the appellant is not at all liable to pay compensation, since, the pillion rider was not covered, under the policy. Hence, the Insurance Company has to be exonerated from the liability and would further submit that the Trial Court has erroneously fixed the compensation at Rs.2,21,661/- without considering the income of the petitioner. Hence, the learned counsel prayed that the award passed by the Tribunal has to be set aside and the appeal has to be allowed.

4. The learned counsel appearing for the respondent would contend that the claimant/ first respondent had suffered very much with physical pain and mental agony, due to injuries caused to him in the accident. The claimant was admitted as an inpatient from 10.02.2008 to 26.02.2008 in the Ganga Medical Centre and Hospital, Erode and would further contend that the accident had occurred only due to the rash and negligent driving of the driver of the motor cycle. The Tribunal, after considering the entire evidence and facts and circumstances of the case awarded the just compensation. Since the second respondent issued the act policy, this policy is covered for the pillion rider also. Hence, there is no illegality or infirmity in the order of the Trial Court.

5. Admittedly, on the date of accident i.e., 10.02.2008, the vehicle bearing registration Registration No.TN-34C-3062 (Yamaha Crux) was insured with the second respondent/appellant. Admittedly, the policy is an act policy. Hence, during the date of accident the vehicle was insured with the second respondent/appellant Insurance Company.

6. Reading of the above said settled principles of law, it is clear that the policy of the Insurance Company is the act policy. It does not apply to the pillion rider of the motorcycle is not at all acceptable. Finally, it was decided that when the policy of the Insurance Company is the act policy, the Insurance Company is also liable to pay compensation to the pillion rider of the motorcycle and insurance company cannot escape from the liability to pay compensation to the pillion rider of the vehicle.

7. Considering the above principles of law, this Court is of the considered view even though the claimant was the pillion rider, the act policy issued by the insurance company also cover the pillion rider. Hence, the insurance company is also liable to pay compensation to the claimant. This Court is considered view that the trial Court after considering the entire facts directed the second respondent also to pay the compensation amount to the claimant. This Court finds no illegality or infirmity, which warrants any interference in the award passed by the Trial Court.

8. In the result, the civil miscellaneous appeal is dismissed by confirming the judgment and decree dated 25.10.2010 made in M.C.O.P.No.455 of 2008 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sankagiri. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

The Motor Accidents Claims Tribunal,
Subordinate Court, Sankagiri.

+1cc to Mr.N.Vijayaraghavan,Advocate sr.15269

+1cc to Mr.C.Kulathaivel,Advocate sr.14842

C.M.A.No.1210 of 2011
and

M.P.No.1 of 2011

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