IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 19.12.2016

Judgment Pronounced on :24.02.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.1979 of 2009
and MP.No.1 of 2009

United India Insurance Co. Ltd.,
No.38, Anna Salai, III Floor,
Chennai - 2. ... Appellant/2nd Respondent
Vs.

1.P.Ashok Raj ..1st respondent/petitioner
2.P.Sankara Narayanan ...2nd Respondents/1st respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 18.11.2008 made in MCOP.No.2510 of 2005 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.Um.Ravichandran [for R1]
No appearance [for R2]

JUDGMENT

The Insurance Company has come forward with this appeal challenging the award passed in MCOP.No.2510 of 2005 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, wherein it was mulcted with liability to pay a compensation of Rs.73,715/- with interest @ 9.5% per annum for the injuries sustained by a pillion rider of a motor cycle.

2. The claimant is the pillion rider in the vehicle which met with an accident and for the injuries he had suffered he filed a claim petition before MACT seeking compensation for Rs.2,50,000/- against the owner of the vehicle and its insurer. The owner of the vehicle remained exparte before the Tribunal. The Tribunal in its award has fastened the liability on the insurance company challenging which the insurance company has preferred this appeal.

3. The only point argued by the learned counsel for the appellant is that as per Ex.R1, there is no specific policy cover for a pillion rider and it is settled Vide New India Assurance Vs Asha Rani [2003 ACJ 1] read along with United India Insurance Co., Ltd., Vs Tilak Singh [2006(1) TNMAC 36

(SC)] that unless there is a specific cover for pillion rider on payment of additional premium, the insurance company shall not be made liable.

4. Per contra, the learned counsel for the first respondent/claimant submitted that the Tribunal has extensively gone into this question and doubted the contention of the appellant and correctly fixed the liability both on the owner and the insurance company of the motor cycle in question. He also relied on the judgment of the Hon'ble Supreme Court in Jawahar Singh Vs. Bala Jain and Others [(2011) 6 SCC 425], besides the authority of the Division Bench of this Court in Royal Sundaram Alliance Insurance Co., Ltd., Vs Meenakshi and others [2009(1) TN MAC 249] and Bajaj Allianze General Insurance Co., Ltd., Vs R. selvaraj and others [2011(22) TN MAC 297] and M.T. Balasubramaniyam Vs S.D.Saravanan & Others [2012(1) TN MAC 427]. In addition, he also brought to the notice of the Court a specific term in Ex.R1, wherein Rs.350/- was received as 'loading on TP' and this is meant to cover additional liability for the pillion rider.

5. In the appeal, the claimant and the owner of the vehicle are arrayed as respondents and notice was served on them as early as in 2010. The first respondent/claimant has entered appearance, whereas the owner of the vehicle/second respondent herein has not chosen to enter appearance and opted to remain exparte.

6. Law is now settled Vide Asha Rani and Tilak Singh cases referred to supra that an insurance company cannot be held liable for the injury or death of gratuitous passenger, that they do not fall under the class of Third Parties within the meaning of Sec.147 of MV Act to have a statutorily mandated insurance cover and as to the rest the insurance company may provide additional cover on receipt of additional premium. In Royal Sundaram A lliance Insurance Co., Ltd., Vs A. Meenakshi & Others [2009(1) TN MAC 249(DB)], this Court has only reiterated the said position, and inasmuch as the policy cover involved in that case was a comprehensive policy though limited by extent of liability, the Court proceeded to hold that it covers innocent gratuitous passengers of a car. So far as the other two authorities relied on by the claimant/first respondent's counsel is concerned, the one reported in 2011(2) TN MAC 297 involves a package policy, the other reported in 2012 (1) TN MAC 427 has followed the dictum in Meenakshi case [2009(1) TN MAC 249(DB)]. Now it all boils down to ascertaining whether the policy involved in this case is a comprehensive policy or does it cover a pillion rider of a motorcycle on payment of any additional premium.

7. Ext.R-1 is a copy of the policy that the appellant has produced. It shows that premium of Rs. 175/- is collected towards basic premium for Third party (termed Basic TP). This obviously is an insurance cover towards Third Party

liability. To this is added Rs. 350/- as Loading TP premium. The point is, is this amount represent additional premium for additional cover? This is best answered by General Regulations in GR.3 of IMT. It reads as below.

"G.R.3 Policy Forms:

Policies insuring Motor Vehicles are to be issued only as per the Standard Form(s) given in Section 6 of the Indian Motor Tariff.

A. Types of Policies

There are two types of Policies:

i.Liability Only Policy: This covers Third Party Liability for bodily injury and/or death and Property Damage. Personal Accident Cover for Owner-Driver is also included.

ii.Package Policy: This covers loss or damage to the vehicle insured in addition to (i) above.

Restricting the scope of cover under Section-I (loss of or damage to the vehicle insured) of the Package Policy without any reduction in Tariff rates is permitted. Excepting this, no alteration or extension of any of the Covers, Terms, Conditions, Exclusions etc. of any of the Policies/Endorsements laid down in this tariff is permitted without prior approval of the TAC.

B. Rating:

Rates provided under this Tariff are minimum rates. Loading on tariff premium rates by 100% may be applied for adverse claims experience of the vehicle insured and individual risk perception as per the insurer's assessment. If the experience continues to be adverse, a further loading of 100% on the expiring premium may be applied. No further loading shall apply. "

This explains what the terms loading TP connotes. Very obviously Rs.350/- that is added as Loading TP premium only signifies that basic premium on third party cover is loaded further by 200% and no more, and hence the same cannot be construed as additional premium for additional cover.

8. The only conclusion that could be derived from the foregoing discussion is that the appellant's counsel is able to satisfy this Court on the merit of his contention. Needless to state, this appeal is allowed and the claimant is directed to realise the compensation awarded from the owner of the vehicle. If the appellant has deposited any amount before

the Tribunal, it is free to withdraw the same. If however, any part of the amount so deposited is withdrawn wholly or partly by the claimant then the appellant shall realise the amount so withdrawn from the owner of the vehicle. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

ds

To:

1.The Motor Accident Claims Tribunal,
Small Causes Court No.II,
Chennai.

+1cc to M/s.S.Arunkumar,Advocate sr.12521

+1cc to M/s.UM.Ravichandran,Advocate sr.11857

CMA.No.1979 of 2009

cnr(co)
ss(18/4/2017)