

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 23-11-2016

Judgment Pronounced on : 30.06.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2067 of 2009

The New India Assurance Co., Ltd.,
No.11, 19 & 20 Govt. Arts College Road,,
Coimbatore.

... Appellant

Vs.

1. Kumar
2. M/s.Bharani Exports,
No.45, TAHDCO Industrial Estate,
Mudalipalayam,
Tiruppur - 638 601.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment passed in MCOP.No.1279 of 2005 dated 30.07.2008 Motor Accident Claims Tribunal (Addl. District Judge) FTC IV, Tiruppur at Coimbatore District.

For Appellant : Mr.J.Chandran

For Respondents: Mr.Ma.Pa.Thangavel

JUDGMENT

The insurance company that was fastened with liability to pay compensation to an injured in a road accident, a pillion rider of a two wheeler, is the appellant herein. It chiefly challenges its liability to pay compensation.

The facts in brief are:

On 23-06-2004, the claimant was travelling in a motor-cycle bearing No: TN 39 Q 9740 as a pillion rider, suffered grievous injuries when the motorcycle met with an accident when its rider negotiated a pedestrian crossing the road. The accident took place in Tiruppur at about 1500 hrs. He was given first aid at M/s. Ganga Hospital at Tiruppur, and he was referred to M/s Ganga Hospital, Coimbatore. On receipt of intimation from the hospital at Coimbatore, FIR was registered by Tiruppur (North) Police Station on 29-06-2004. The claimant made a claim of Rs.10.0 lakhs as compensation whereas the Tribunal has passed an award for Rs. 1,99,680/- payable with interest at 7.5% p.a.

3. Before the Tribunal, the appellant/second respondent took up the following pleas in its counter:

(a) Accident has happened due to the negligence of the pillion rider (claimant). At any rate no additional premium has been paid for providing insurance cover to the pillion rider.

(b) Inasmuch as the claimant has not suffered any permanent disability, the compensation claimed is excessive.

4. It has come out in evidence that the owner of the vehicle is one M/s Bharani Exports, Tirupur, of which the Claimant himself is the proprietor. The rider of the motorcycle was his own brother. Ext.R-1 is the policy which shows that Rs.50 has been charged as premium towards compulsory PA insurance for owner cum rider. In the back ground of these facts, the Tribunal relied on the authority cited in 2008 (1) TNMAC 67 and has held that the insurance company is liable too. This is under challenge.

5. The learned counsel for the appellants contentions were:
A road accident is a medico-legal case and hence intimation should have been given by the hospital concerned, but in the instant case even though it is claimed that claimant was taken to Ganga Hospital, Tiruppur, it has not given any intimation to the police. Secondly, the Accident Register of the Tiruppur Hospital is deliberately suppressed which would throw light on the fact if the accident as claimed was genuine. In other words, the FIR is a designer FIR registered to suit the claimant to project him as a pillion rider. Secondly, even if the accident had taken place in the manner indicated still the appellant is not liable as there is no policy cover for a pillion rider. Thirdly, the additional premium of Rs.50 was received only when the owner as rider has suffered injury.

6. So far as the first point is concerned, the appellant has not challenged the manner of accident anywhere in its counter. As to the rest, there is some merit. Ext.B-1 is the policy of insurance and it does not disclose that any additional premium has been paid for the injury or death of a pillion rider. It may be that premium has been paid for covering personal accident for owner cum rider, but since the owner has travelled only as a pillion rider and not as a rider, he may not be able to enforce a claim against the appellant. The law is too firmly settled that a pillion rider of a two wheeler is not entitled to be covered by an Act policy unless additional coverage is obtained on payment of additional premium.

7. In the end, this appeal is allowed. No costs. The award passed in MCOP.No.1279 of 2005 by MACT (Sub Judge), Tiruppur, is set aside in respect of the Insurance Company and the claimant is entitled to claim compensation from the owner of the vehicle.

Sd/-
Asst.Registrar (CS VI)

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Sub Asst. Registrar

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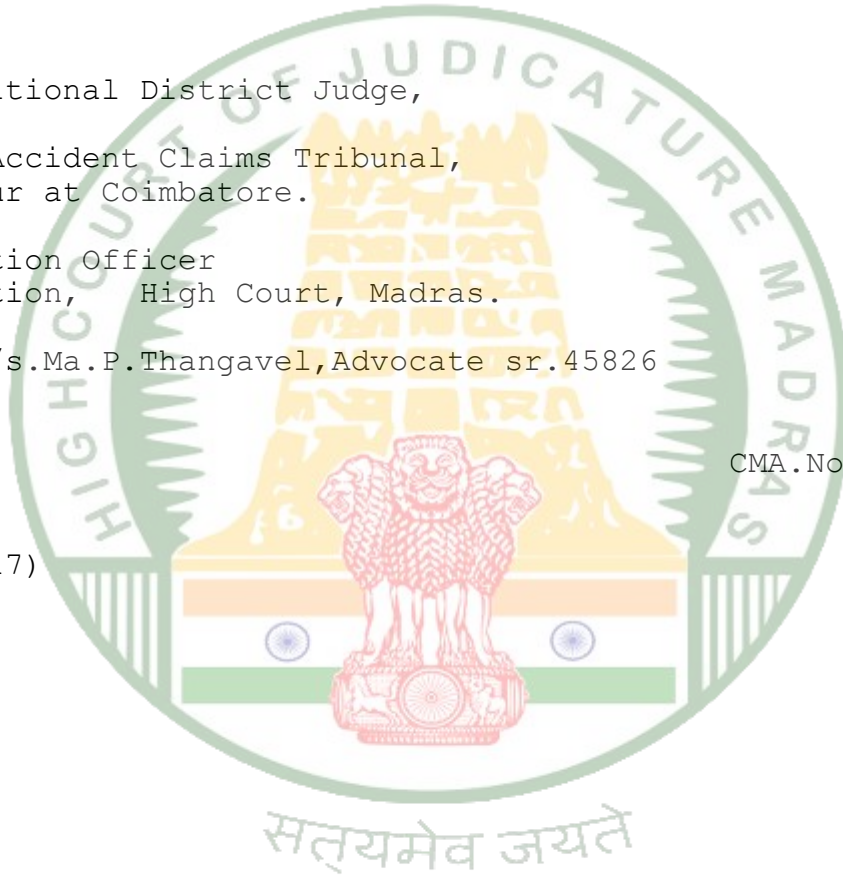
1.The Additional District Judge,
FTC IV
Motor Accident Claims Tribunal,
Tiruppur at Coimbatore.

2.The Section Officer
VR Section, High Court, Madras.

+1cc to M/s.Ma.P.Thangavel,Advocate sr.45826

CMA.No.2067 of 2009

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