



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.77 of 2010 and
C.M.P.No.1 of 2010

M/s. United India Insurance Company Ltd.,
104-A, Peramanur Main Road,
Salem - 7.

.. Appellant/2nd Respondent
Vs.

1. Palanisamy
2. A.C.Manian
3. The Managing Director,
Tamil Nadu State Transport Corporation,
No.12, Ramakrishna Road, Salem - 7.
(2nd Respondent set ex parte in the Lower Court)

.. Respondents/Petitioner and
Respondent 1 & 3

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 01.07.2009 made in MCOP No.872 of 2006 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court No.2), at Salem.

For Appellant : Mr.J.Chandran

For R1 : Mr.R.Marudhachalamurthy

For R3 : Mr.D.Venkatachalan

JUDGMENT

On 24.06.2005, the claimant was travelling in his motorcycle bearing number TN 33 K 7462. He accommodated at least two in the pillion. While so, at the scene of accident, the motorcycle which the claimant was then riding was hit by another motorcycle coming from behind. As a result, all the three in the motorcycle which the claimant rode fell. A State Corporation bus was coming further behind ran over one of them, who died, and so far as the claimant was concerned, he suffered some injuries. He moved the Tribunal with a claim for Rs.5,00,000/- against the owner and the insurance company of the motorcycle that first hit them and also against the State Transport Corporation. Before



the Tribunal, the Insurance Company of the offending motorcycle took up a plea that the vehicle did not have a valid policy cover at the time of accident.

2. The Tribunal has found that inasmuch as the Claimant himself was guilty of taking two in his pillion, apportioned the negligence in the ratio of 75% in favour of the driver of the offending vehicle and 25% to the claimant. So far as the compensation is concerned, it determined the compensation at Rs.40,000/- and after reducing it by 25% it awarded Rs.30,000/- as compensation payable by all the respondents jointly and severally with interest at 7.5%. So far as the defence taken by the Insurance Company of the offending motorcycle, the appellant herein, is concerned, the Tribunal invoked the doctrine of pay and recover. So far as the State Transport Corporation is concerned, the decree of the MACT has absolved it of any liability.

3. Contending that the Tribunal ought not to have invoked the doctrine of pay and recover in a case of no policy, the Insurance Company of the offending motorcycle has come forward with the appeal. Where the claimant is not able to establish that the vehicle was insured with the appellant or at least provided the minimum materials to facilitate the Insurance Company to make a positive statement as to the availability of the insurance policy, it will be nigh difficult for the Insurance Company to produce the policy when it contends that it did not have entered into a contract with the owner of the offending motorcycle. As to the applicability of the doctrine of pay and recover to the facts of this case is concerned, the same cannot be invoked. Accordingly, the appellant is bound to succeed.

4. The appeal is allowed. No costs. Mr.J.Chandran, learned counsel for appellant submitted that they had already deposited the compensation amount as determined by the Tribunal the appellant may withdraw the same. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

asi/ssn



To

1. The Motor Accident Claims Tribunal,
(Additional District Judge),
Fast Track Court No.2,
Salem.

2. The Section Officer,
V.R. Section, High Court, Madras. (2 copies)

+1cc to Mr.J.CHANDRAN, Advocate, S.R.No. 56744

+1cc to Mr.D.VENKATACHALAM, Advocate, S.R.No. 56023

C.M.A.No.77 of 2010

SR(CO)
TR(20/02/2018)