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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1101 of 2008

and

M.P.No.1 of 2008

The United India Insurance Co. Ltd.,
Motor Accident Third Party Claims Cell,
South India Co-operative Building,
3rd Floor, No.38, Anna Salai,
Chennai - 600 002.

...Appellant/2nd Respondent

Vs

1.Zubedha
2.Kadar Sulthan

... 1st Respondent/Petitioner

...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and decree passed by the Motor Accidents Claims Tribunal, (Sub-Court), Ponneri in M.C.O.P.No.208 of 2003 dated 16.03.2005.

For Appellant : Mr.D.Bhaskaran

For Respondents : S.Giridharan for R1
R2- Not ready in notice

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the Award dated 16.03.2005 passed by the Motor Accidents Claims Tribunal, (Sub-Court), Ponneri in M.C.O.P.No.208 of 2003.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The first respondent while travelling as a pillion rider, on 31.01.2003 in a M-80 Bike bearing Registration No.TN-20-X-7002 met with an accident and sustained injuries. The second respondent who was the driver of the M-80 Bike is the owner of the said vehicle and the appellant is the insured. The first respondent preferred a claim before the Motor Accidents Claims Tribunal in M.C.O.P.No.208 of 2003, seeking a compensation of Rs.1,00,000/-.



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(ii) The Motor Accidents Claims Tribunal, by its Award dated 16.03.2005 in M.C.O.P.No.208 of 2003 directed the Appellant to pay the first respondent a sum of Rs.99,000/- together with interest at the rate of 9% per annum from the date of claim till the date of realisation.

3. Aggrieved by the Award dated 16.03.2005 passed in M.C.O.P.No.208 of 2003, the instant appeal has been filed by the Insurance Company.

4. Heard, Mr.D.Bhaskaran, learned Counsel for the Appellant and Mr.S.Giridharan, learned Counsel for the first respondent.

5. According to the learned counsel for the appellant, the primary ground for challenge in the instant appeal is that the appellant Insurance Company is not liable to compensate the first respondent, since the policy is an Act policy and does not give coverage for a pillion rider.

6. In the instant case, according to him, the pillion rider is the first respondent/claimant and the driver of the vehicle is the insured. Further, the learned Counsel would contend that the driver of the vehicle is the son and the first respondent is his mother.

7. According to him, the insurance policy was marked at the instance of the first respondent/claimant before the Tribunal as Ex.P9 and therefore the first respondent is fully aware that the policy is an Act policy and does not give coverage for a pillion rider as he is not a third party.

8. The learned Counsel for the Appellant drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of United India Insurance Co. Ltd., Shimla Vs Tilak Singh and others reported in CDJ 2006 SC 298 and submitted that the Hon'ble Supreme Court has held that the Act policy does not cover liability for a pillion rider.

9. The learned Counsel for the appellant also drew the attention of this Court to the another judgment of the Hon'ble Supreme Court in the case of Dipak Misra Vs Surendra Nath Loomba and others reported in 2012 (2) TN MAC 650 (SC) and submitted that the Hon'ble Supreme Court had remitted the matter to the Tribunal for fresh consideration, since the insurer contended that the policy in question is only an Act policy and not a comprehensive policy which was disputed by the claimant.

10. The learned Counsel for the appellant also relied upon another judgment of the Hon'ble Supreme Court in the Case of National Insurance Co. Ltd., Vs Balakrishnan and another



reported in 2012 (2) TN MAC 637(SC) wherein, the Hon'ble Supreme Court has held that before fastening liability on the Insurance Company, the Tribunal will have to scrutinize the insurance policy and give its findings as to whether the Insurance Company is liable to pay the compensation under the policy or not.

11.Per contra, the learned Counsel for the first respondent would submit that even in its counter statement filed before the Tribunal, the appellant Insurance Company has not taken such a stand that the policy is only an Act policy and not a comprehensive policy. Further the learned Counsel for the first respondent would also contend that even in the additional counter statement filed by the appellant before the Tribunal, the appellant has not taken such a stand. Since they had not taken a specific stand that on account of an Act policy they are not liable to compensate the first respondent, the Tribunal has not framed any issue regarding the same under the impugned Award. The learned Counsel further contended that due to the accident, the first respondent sustained grievous injuries and had to undergo surgeries in the skull.

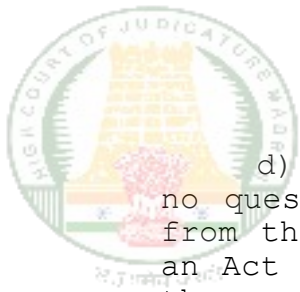
12.According to the learned Counsel for the first respondent, the nature of injuries and the surgeries performed on the first respondent has not been disputed by the appellant by producing any contra evidence.

13.This Court, after having considered the materials available on record and after having examined the impugned Award and after hearing the submissions of the respective counsels, observes the following:-

a) There is a clear finding given by the Tribunal that the first respondent was a pillion rider in the vehicle and the vehicle was insured with the appellant by the second respondent who is the owner.

b) Neither in the counter nor in the additional Counter, the appellant has taken a specific defence that the policy is only an Act policy and not a comprehensive policy.

c) The judgment relied upon by the learned Counsel for the appellant namely 2012 (2) TN MAC 650 (SC), CDJ 2006 SC 298 and 2012 (2) TN MAC 637(SC) are not applicable to the facts of the instant case, since in all those cases the insurer has pleaded that being an Act policy, the insurance coverage cannot be granted to a pillion rider of a vehicle. Further in the instant case, it is the case of the first respondent that there is insurance coverage and that is the reason why he has filed the insurance policy before the Tribunal which has been marked as Ex.P9. If it was not the stand of the first respondent-claimant that there is no insurance coverage, there was no necessity for the first respondent-claimant to have filed the insurance policy.



d) Even in the cross examination of P.W.1, by the appellant, no question was raised by the appellant and an answer elicited from the first respondent as to whether the insurance policy is an Act policy or comprehensive policy. This issue is raised by the appellant for the first time in this appeal.

e) Since there was no specific pleadings by the appellant Insurance Company that the insurance policy is only an act policy and not a comprehensive policy and does not give coverage for a pillion rider, there was no necessity for the Tribunal to adjudicate on this issue under the impugned award.

14. In the light of the above observations, this Court is of the considered view that there is no infirmity in the impugned award. In the result, there is no merit in the instant appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. The first respondent is permitted to withdraw the amount lying to the credit of M.C.O.P.No.208 of 2003 on the file of the Motor Accidents Claims Tribunal, (Sub-Court), Ponneri by filing an appropriate application.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

AT

To

1. The Sub-Court,
Motor Accidents Claims Tribunal,
Ponneri.

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

+1cc to Mr.D.Bhaskaran, Advocate sr.no.63515
+1cc to Mr.S.Giritharan, Advocate sr.no.63580

C.M.A.No.1101 of 2008

sj(co)
nr 20/11/2018