BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.191 of 2016

1.A.R.Gnanambal

2.A.R.Palaniappan

3.A.R.Meena ... Appellants/Petitioners

Vs.

1.P.Alamelu

2.The Branch Manager,
The Oriental Insurance Company Ltd.,
Sharadha Shopping Centre,
39/40, Work Shop Road,
Simmakkal, Madurai-625 001. ... Respondents/Respondents

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 05.04.2007 made in MCOP No.280 of 2005 on the file of Motor Accident Claims Tribunal/ Additional District Judge (Fast Track Court No.II), Madurai.

For appellant : Mr.C.Godwin
For 2nd respondent : Mr.K.Bhaskaran

JUDGMENT

This civil miscellaneous appeal is directed against the judgment and decree passed by the Motor Accident Claims Tribunal / Additional District Judge (Fast Track Court No.II), Madurai, in M.C.O.P.No.280 of 2005, dated 05.04.2007.

2. Heard the learned counsel appearing for the appellants / claimants and the learned counsel appearing for the 2nd respondent / Insurance Company.

3.The above appeal has been filed by the appellants/claimants challenging the finding of the Tribunal exonerating the Insurance Company from payment of compensation. While exonerating the Insurance Company, the Tribunal directed the 1st respondent/owner of the vehicle to pay compensation, who was set ex parte by the Tribunal.

4.Learned counsel for the appellants/claimants has contended that at the time of accident, the deceased travelled in the motorcycle bearing Registration No.TN-59U-8141 belonging to the 1st respondent, as a pillion and due to the rash and negligent riding of the 1st respondent, the rider lost his control and hit the backside of the bus which was proceeding in front of him, due to which, the pillion fell down and in spite of intensive treatment, he died in a hospital.

5.Learned counsel for the 2nd respondent / Insurance Company contended that the accident had occurred due to the negligence of the deceased, who was recklessly sitting in the motorcycle and while the rider of the motorcycle was about to stop the same on seeing the bus, which was proceeding in front of him, the pillion rider viz., deceased lost balance and fell down from the motorcycle and thereby, contributed to the accident.

6. This Court is not inclined to accept the above submission of the learned counsel for the second respondent / Insurance Company, in view of the fact that the first respondent, rider of the vehicle, has fairly admitted in the FIR that due to his negligence, the accident had occurred.

7. Learned counsel for the appellants / claimants has further contended that at the time of accident, the motorcycle was covered by the policy of insurance under the 2nd respondent / Insurance Company and the policy is a package policy, by which, separate premium was paid by the owner of the motorcycle to cover the pillion rider and therefore, the Insurance Company is liable to pay the entire compensation amount.

8. It is seen from the record that the appellants/claimants before the Tribunal contended that the offending motorcycle was covered with the Insurance Policy under the 2nd respondent / Insurance Company. Whereas, the 2nd respondent / Insurance Company contended that the offending vehicle was not insured with them. However, to substantiate the same, the insurance policy of the vehicle was not marked by either of the parties.

9. Though the learned counsel for the 2nd respondent Insurance Company contended that the pillion was not covered under the policy, he has not produced the insurance policy of the offending vehicle to verify as to whether there is a provision in the policy for the coverage of pillion rider. Therefore, this Court directed the second respondent to produce the Insurance Policy and today, he produced the Insurance Policy of the vehicle, wherein it has been clearly stated that it is a package policy and the pillion rider is also covered under the Policy. This Court is of the view that the Insurance Company is liable to pay the entire compensation amount awarded by the Tribunal, as per the decision of the Hon'ble Supreme Court in National Insurance Company Ltd., vs. Balakrishnan reported in 2012 (2) TN MAC 637(SC), wherein it has been clearly held that

the pillion in the motorcycle is also covered under the package policy. The relevant portion of the said judgment is reproduced hereunder:-

> "19.It is extremely important to note here that till 31st December, 2006 the Tariff Advisory Committee and, thereafter, from 1st January, 2007, IRDA functioned as the statutory Regulatory Authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies by all Insurance Companies. The High Court had issued notice to the Tariff Advisory Committee and the IRDA to explain the factual position as regards the liability of the Insurance Companies in respect of an occupant in a Private Car under the "Comprehensive / Package Police". Before the High Court, the Competent Authority of IRDA had stated that on 2nd June, 1986, the Tariff Advisory Committee had issued instructions to all the Insurance Companies to cover the pillion rider of a Scooter/Motorcycle under the "Comprehensive Policy"and the said position continues to be in vogue till date. It had also admitted that the "Comprehensive Policy" is presently called a "Package Policy". It is the admitted position, as the decision would show, the earlier Circulars dated 18th March, 1978 and 2nd June, 1986 continue to be valid and effective and all Insurance Companies are bound to pay the compensation in respect of the liability, towards an occupant in a Car under the "Comprehensive / Package Policy" irrespective of the terms and conditions contained in the policy. The Competent Authority of the IRDA was also examined before the High Court who stated that the Circulars dated 18th March, 1978 and 2nd June, 1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1st July, 2002 and they continue to be operative and binding on the Insurance Companies. Because of the aforesaid factual position, the Circulars dated 16th November 2009 and 3rd December, 2009 that have been reproduced hereinabove, were issued".

10. In view of the above, the finding of the Tribunal with regard to liability alone is set aside and the entire liability is fixed on the second respondent / Insurance Company and the Insurance Company shall deposit the entire compensation amount fixed by the Tribunal, less the amount already deposited, if any, with accrued interest at 7.5% p.a. from the date of petition till the date of deposit to the credit of the claim petition, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants / claimants are permitted to withdraw the same with accrued interest and costs in the ratio as apportioned by the Tribunal, without filing any formal petition.

11. This Civil Miscellaneous Appeal is accordingly partly allowed. No costs.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Additional District Judge (Fast Track Court No.II),
Motor Accident Claims Tribunal,
Madurai.

COPY TO:
The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.C.Godwin, Advocate SR.No. 67661
+2cc to M/S.K.Bhaskaran, Advocate SR.No. 67704, 71078

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JM/SV/SAR 4/31.07.2018/4P/7C