

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3224 of 2007
and M.P.No.1 of 2007

The National Insurance Company Ltd.,
No.52, Opanakara Street, Coimbatore.

....Appellant/2nd Respondent

Vs.

1.Jabasingh

2.Moorthy

...Respondents /Respondent/1st
Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 30.10.2006 made in O.P.No.530 of 2006 on the file of the Motor Accident Claims Tribunal, (II Additional Sub Court), Coimbatore.

For Appellant : Mr.D.Bhaskaran

For Respondent 1 : Mr.D.Sugumar

For Respondent 2 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Award and Decree dated 30.10.2006 made in O.P.No.530 of 2006 on the file of the Motor Accident Claims Tribunal, (II Additional Sub Court), Coimbatore.

2.The case in brief is as follows:

On 13.01.2005 at about 9.30 p.m., the 1st respondent herein was waiting for the bus to go to Sauripalayam from Peelamedu. At that time, his friend Senthilkumar came in a TVS-Suzuki Samurai motorcycle bearing Regn.No.TN38 A 8712 and subsequently, the first respondent travelled in the said motorcycle as a pillion rider, which was proceeding towards Sauripalayam. When the two-wheeler reached near Transport Corporation in the Sauripalayam Road, due to the rash and negligent driving of the rider of the motorcycle, it dashed against a lamp post. Due to the impact, the first

respondent sustained injuries on his head. He filed a claim petition before the Tribunal claiming a sum of Rs.1,00,000/- as total compensation. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.35,500/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant / Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company, even though, not questioned the quantum of compensation awarded by the Tribunal, submitted that the insurance policy for the two-wheeler in question, is an 'Act Policy' and there is no risk to cover pillion rider and hence the Insurance Company is not liable to pay any compensation to the claimant.

5.The learned counsel for the first respondent / claimant has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.With regard to negligence, even though it was put forth on the side of the Insurance Company before the Tribunal that the Insurance Company is not liable to pay compensation to the claimant on account of the fact that the policy in question is an 'Act Policy' and it does not cover the pillion rider, the Tribunal relied upon the decision of the Hon'ble Supreme Court in the case of Pramod Kumar Agarwal v. Mustari Begum [AIR 2004 SC 4360] and held that in these types of cases the transaction is between the insurer and the insured and hence the Insurance Company shall pay the compensation and recover the same from the owner of the vehicle. Holding so, the Insurance Company has ordered for pay and recovery. But, it is apparent that the policy in question is an 'Act Policy' and it will not cover the risk of a pillion rider. When that be so, the Tribunal ought not to have directed the Insurance Company to pay compensation. The judgment relied on by the Tribunal lies on a different footing and it is not related to this aspect. In these circumstances, it would be appropriate to exonerate the Insurance Company from payment of compensation to the claimant.

8.In the result, the Civil Miscellaneous Appeal is

allowed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is permitted to withdraw the amount if any already deposited before the Tribunal in this case. It is open to the claimant to seek appropriate remedy against the owner of the vehicle in accordance with law.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rna

To

1.The Motor Accidents Claims Tribunal,
II Additional Sub Court,
Coimbatore.

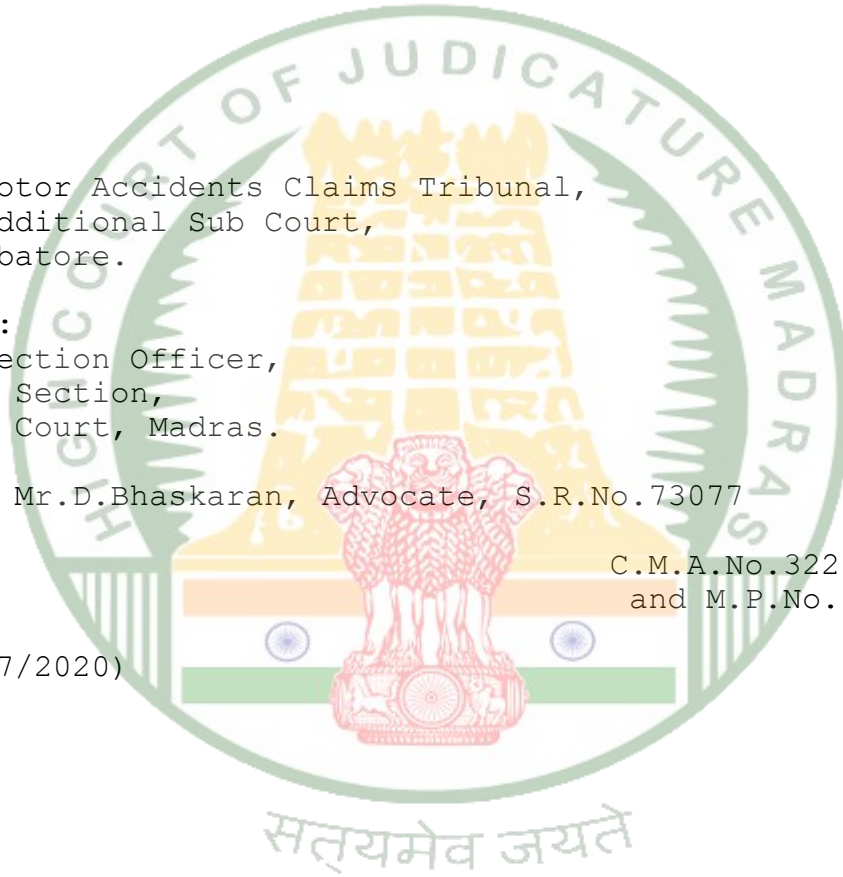
Copy to:

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.73077

C.M.A.No.3224 of 2007
and M.P.No.1 of 2007

BS (CO)
CB(28/07/2020)



WEB COPY