IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.No. 2443 of 2015
and MP.No. 1 of 2015

The New India Assurance Co.Ltd.,
I Floor, L.V.B. Building, Thiru Vi.Ka. Street,
Villupuram. ...Appellant /2nd Respondent

Vs.

1. R. Pandurangan ...1st Respondent/Petitioner
2. K.Thirumurugan ...2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of MV Act 1988 against the Judgment and decree dated 19.01.2015 passed in MCOP. No. 297 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, -II, Villupuram.

For Appellant : M/s.M.Krishnamoorthy

For Respondents : M/s. C. Munusamy - R1
R2 - Exparte

JUDGMENT

This Civil Miscellaneous has been preferred against the judgement and decree 19.01.2015 passed in MCOP. No. 297 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, -II, Villupuram.

2. The appellant-Insurance Company is 2nd respondent in M.C.O.P.No. 168 of 2013 on the file of the Motor Accidents Claims Tribunal, Villupuram. The 1st respondent has filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.09.2012. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the 1st respondent's vehicle and since the 2nd respondent being the insurer of the said vehicle, the tribunal directed both the 1st & 2nd respondents to pay the compensation of Rs.1,53,557/- along with interest at the rate of 7.5 % per annum jointly and severally. Challenging the liability fastened on the Insurance

Company, the appellant-Insurance Company has come out with the present appeal.

3. Heard both sides and perused the documents available on record.

4. In the grounds of appeal, the appellant/Insurance Company has contended that the tribunal ought to have dismissed the claim petition against the appellant when the vehicle bearing Reg.No. PY-01-S-4131 owned by the 2nd respondent was insured with the appellant under Liability policy and as such no coverage was given for the pillion rider/claimant, who was tavelling at the time of the accident. It is further contended that the tribunal ought to have exonerated the appellant and fastened the liability only on the 2nd respondent, the owner of the vehicle as Ex.R1 reveals that 2nd respondent's motor cycle PY-01-S-4131 was insured only under Act Policy which does not cover the risk of a pillion rider. It is also contended by the appellant that the tribunal has not properly considered the evidence of RW1, the Administrative Officer of the appellant and Ex.R1, the copy of the policy which prove that the police was only Liability policy which does not cove the risk of the pillion rider. Hence it is the contention of the appellant/Insurance company that the tribunal without considering any of the aspects stated above, fastened the liability on the appellant/Insurance Company, which is unsustainable both in law and on facts.

5. On perusal of records, it is observed that the accident had occurred only due to the rash and negligence on the part driver of the 1st respondent vehicle. With regard to the disability, it is very much aggrieved by the appellant that RW1 was examined before the tribunal Ex.R1 Policy was also marked. RW1 who is working as Administrative Officer in the Insurance company had deposed that at the time of the accident, two persons were travelling in the offending vehicle bearing Reg.No. PY 01-S 4131 and the claimant herein was the pillion rider. As per the policy conditions, the pillion rider is not entitled to get the compensation and it covers only to the rider of the vehicle and the third party, therefore, if the tribunal awarded any compensation that has to be paid by owner of the vehicle and the Insurance company/ appellant herein is no way liable to pay any compensation to the the claimant.

6. But, RW1 in his cross examination had deposed that policy covers for two persons for travelling in the vehicle and the same was also in force at the time of the accident. Exhibit P6 also clearly reveals that there is a policy coverage for two

persons. In view of the above, the tribunal has fixed the liability on the Insurance company.

7. The learned counsel for the appellant has relied upon the judgment of the Apex Court reported in 2006 (1) TNMAC 36 (SC) in the case of United India Insurance Co.Ltd, Shimla Vs. Tilak Singh & Others. The relevant portion of the judgment is extracted below;

> "... In our view, although the observations made in Asha Rani's case (supra) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-Insurance Company that it owed no liability towards the injuries suffered by the deceased-Rajinder Singh who was a pillion rider, as the Insurance Policy was a statutory policy, and hence it did not cover the risk death of or bodily injury to gratuitous passengers."

8. This Court by relying upon the observation made Apex Court in the judgment cited supra, is of the view that the liability fixed on the appellant/Insurance Company is not reasonable and proper, since the policy which was in force at the time of the accident is only a liability policy, which does not cover the pillion rider, who is a gratuitous passenger. Inspite of the deposition made in the cross examination by RW1 and the document marked as Ex.R1- Policy, this Court is of the view that when there is no coverage for the gratuitous passenger who travelled in the offending vehicle as pillion rider, so it is the burden of the owner of the vehicle to pay the compensation, hence the owner of the vehicle /2nd respondent herein alone is liable to pay compensation. The liability fixed on the appellant/insurance company is exonerated.

9. In the result,

(i). The Civil Miscellaneous Petition is allowed. The award of the tribunal dated 19.01.2015 passed in MCOP. No. 297 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, -II, Villupuram is modified to the effect that the entire compensation awarded by the tribunal has to be paid by the owner of the vehicle/2nd respondent herein. No costs. Consequently, connected Miscellaneous Petition is closed.

(ii) Since it is represented by the learned counsel appearing for the appellant/insurance Company that they have deposited 50% of the compensation amount before the tribunal, they are permitted to withdraw the same.

(iii). The 2nd respondent/owner of the vehicle is directed to deposit the entire award amount along with interest awarded by the tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the tribunal is directed to transfer the award amount to the claimant's bank account through RTGS within a period of two weeks thereon. the claimant/1st respondent is also permitted to withdraw the same.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Special Sub Judge, -II
(The Motor Accidents Claims Tribunal),
Villupuram.

Copy to

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

+1cc to Mr.C.Munusamy, Advocate Sr.63751

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srg 02/03/2020