

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No. 1849 of 2010

United India Insurance Company Ltd.,
78, Kamarajar Salai,
Cauvery Nagar,
Kulithalai.

: Appellant/2nd Respondent

versus

1. Gopalakrishnan : 1st Respondent/Claimant

2. M.Murugan

(Set ex-parte before the lower court)

: 2nd Respondent/

1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.06.2009 made in OP.No.628 of 2003, on the file of the Motor Accident Claims Tribunal (Fast Track Court), Namakkal.

For Appellant : Mrs.R.Sree Vidhya

For Respondents : Notice served-No appearance-R1

R2 - Exparte

JUDGMENT

[This Appeal was taken up for hearing through Video Conferencing]

This appeal has been filed by the appellant/insurance company challenging the award dated 22.06.2009 in MCOP.No.628 of 2003 passed by the Motor Accident Claims Tribunal (Fast Track Court), Namakkal.

Brief facts leading to the filing of this Appeal:

2. On 13.09.2002, at about 8.30 P.M., while the first respondent/claimant was travelling as a pillion rider in a motor cycle bearing registration No.TN 28 C 9050, the rider of the motor-cycle, dashed against a cyclist. As a result of the said

accident, the first respondent fell down from the motor-cycle and sustained injuries. According to the first respondent/claimant, the accident happened only due to the rash and negligent driving by the rider of the motor-cycle bearing registration No.TN 28 C 9050.

3. The first respondent preferred a claim petition before the Motor Accidents Claims Tribunal, (Fast Track Judge), Namakkal in MCOP No.628 of 2003, seeking compensation for the injuries sustained by him, as a result of the said accident.

4. By an award dated 22.06.2009 in M.C.O.P. No.628 of 2003, the Motor Accidents Claims Tribunal, (Fast Track Court), Namakkal, directed the appellant/Insurance Company to pay the first respondent/claimant a sum of Rs.61,345/- (Rupees Sixty one thousand three hundred forty five only) as compensation together with interest @ 7.5% per annum from the date of claim petition till the date of deposit, and also awarded costs.

5. The break-up details of the compensation awarded by the Tribunal in favour of the first respondent/claimant are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Medical expenses	27,345/-
Pain and sufferings	30,000/-
Extra nourishment	2,000/-
Transportation charges	2,000/-
Total	61,345/-

6. Challenging the said award dated 22.06.2009 passed in MCOP. No.628 of 2003, this appeal has been filed by the appellant/Insurance company on the ground that they are not liable to compensate the claimant, since the subject insurance policy is an 'Act policy' and the claimant has travelled as a pillion rider in the insured vehicle.

7. Heard Mrs.R.Sree Vidhya, learned counsel for the Appellant /Insurance company. Both the respondents have been duly served and their names have also been printed in the cause list. But they are not represented by any counsel before this Court.

8. Before the Tribunal, the claimant has filed nine documents which were marked as Ex.P1 to Ex.P9 and one witness was examined viz., P.W.1 - the Claimant himself. On the side of

the insurance company, one witness was examined and one document was marked.

9. It is the contention of the first respondent/claimant, as seen from the pleadings, before the tribunal that on 13.09.2002, at about 8.30 P.M., in front of Kandukara perumal's house at Cinema kottaimedu on Jedarpalayam to Velur Road, while he was travelling as a pillion rider, the rider of the motor cycle, dashed against a cyclist. It is his case that only due to the rash and negligent driving of the motor-cycle by its rider, the accident had occurred which resulted in the first respondent sustaining injuries.

10. This Court has also perused and examined the insurance policy, which has been marked as Ex.R1 before the Tribunal. As seen from the Ex.R1, as rightly contended by the appellant the policy is only an 'Act Policy'. It is now settled law that a pillion rider of the insured motor-cycle, cannot be treated as a third party under Section 147 of Motor Vehicles Act.

11. Law is well laid down by the decision of the Hon'ble Supreme Court in the case of United India Insurance Company Limited Vs. Thilak Singh and others reported in (2006) 4 SCC 404, wherein the Hon'ble Supreme Court held that the pillion rider of an insured motor-cycle is not a third party, when the subject policy is only an Act Policy, which does not give coverage for the pillion rider.

12. In view of the settled law, the Tribunal ought to have rejected the claim made by the first respondent/claimant against the appellant before the Tribunal. However, by total non-application of mind to the policy Ex.R1, which is an Act Policy, the Tribunal has passed an award both against the owner and insurance company of the vehicle instead of making the owner alone liable to pay the compensation to the claimant.

Conclusion:

13. For the foregoing reasons, the impugned award dated 22.06.2009 passed by the Motor Accident Claims Tribunal (Fast Track Court), Namakkal in MCOP. No.628 of 2003 is hereby set aside against the Appellant alone and this appeal shall stand allowed. No costs.

14. The learned counsel for the appellant would submit that pursuant to the interim order granted by this Court in M.P.No.1 of 2010 in CMA. No.1849 of 2010, at the time of admission of this appeal, the entire award amount has been deposited to the credit of MCOP. No.628 of 2003 dated 27.08.2010.

15. In view of the submission made by the learned counsel for the appellant, the Appellant is permitted to withdraw the deposited amount with accrued interest before the Tribunal by filing an appropriate application.

16. The owner of the vehicle namely the second respondent herein is directed to deposit the amount awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs to the credit of MCOP.No.628 of 2003 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent/claimant is permitted to withdraw the amount along with accrued interest lying to the credit of MCOP.No.628 of 2003 by filing appropriate application.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
(Fast Track Court) Namakkal.
2. The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A. No. 1849 of 2010

GP(CO)
CSR 20.04.2021

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