IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2020

PRONOUNCED ON : 08.12.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.3648 OF 2010
AND
M.P.NO.1 OF 2010

(THROUGH VIDEO CONFERENCING)

The Divisional Manager,
National Insurance Co., Ltd.,
J.N.Street, Puducherry. .. Appellant/
2nd Respondent

vs.

1.Shanthi
2.Dhanasezian @ Dhananjeyan
(2nd respondent set exparte before the Tribunal)
.. Respondents/
Petitioner/1st Respondent

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.709 of 2007 dated 20.07.2010 on the file of the Motor Accidents Claims Tribunal (Principal Sub Judge) Pondicherry.

For Appellant : Mr.S.Arunkumar

For 1st respondent : No Appearance

J U D G M E N T

The Insurance Company is the appellant. It is aggrieved by the impugned Judgment and Decree dated 20.07.2010 passed by the Motor Accidents Claims Tribunal at Pondicherry (Principal Sub Judge), Pondicherry in M.C.O.P.No.709 of 2007.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.2,61,400/- as compensation together with interest at 7.5% p.a. from the date of the claim petition till the date of deposit and costs, to the 1st respondent/claimant for the injuries suffered by her.

3. This case has been listed on several occasions since the lockdown was imposed and after it was lifted. However, there is no representation on behalf of the 1st respondent/claimant and the 2nd respondent owner of the insured vehicle. Since this issue is squarely covered by several decisions of this Court, this appeal was taken up for final hearing today. After hearing, the learned counsel for the appellant, this case was reserved for passing orders.

4. In the claim petition, the 1st respondent/claimant has alleged that when he was travelling as a pillion rider on a motor cycle bearing registration No.PY-01-K-5268, belonging to the 2nd respondent insured with the appellant-Insurance Company, he met with an accident on 23.04.2007 at about 6.15 a.m. It was alleged that in order to avoid a pit, the rider of the insured motor cycle applied the break, as a result of which, he could not control the motorcycle and fell in a near by pond, resulting in injuries.

5. It was alleged that due to the accident, the 1st respondent/claimant lost her memory as she suffered head injuries and other grievous injuries which caused permanent disability and had paralyzed lower and upper limb and she could not continue with her regular job as before. Therefore, the 1st respondent/claimant filed the above claim petition for compensation.

6. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.2,61,400/- payable by the 1st respondent/claimant. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

7. It is the case of the appellant-Insurance Company that the Tribunal has wrongly awarded the aforesaid compensation as the 1st respondent/claimant was a pillion rider and the policy in question was a basic Act policy with personal accident cover for only the owner-driver and not the pillion rider. It is submitted that the 1st respondent-claimant was neither a owner to be covered under the P.A.cover nor a third party.

8. The learned counsel for the appellant-Insurance Company relied on the following decisions:-

i. National Insurance Co. Ltd. Vs. Ashalata Bhowmik, (2018) 9 SCC 801.

ii.New India Assurance Company Limited vs. Prabha Devi and others (2013) (1) TN MAC 781 (SC)

iii. New India Assurance Company Limited vs. Prabha Devi and others (2013) (1) TN MAC 781 (SC)

iv. The Divisional Manager, M/s.United India Insurance Co., Ltd. Vs/ R.Rekha & Others, 2017 (2) TN MAC 674

v.New India Assurance Co.,Ltd., vs C.M.Jaya and Others, (2002) 2 SCC 278

vi. The New India Assurance Co., Ltd., vs D.Krishnamoorthy & others, 2015(1) TN MAC 19(DB) ; 2016 ACJ 5

9. It is submitted that the 1st respondent/claimant was neither a owner to be covered under the P.A.cover nor a third party. The learned counsel for the appellant submits that the Tribunal has awarded the compensation merely on the ground that the driver of the insured vehicle had a proper driving licence at the time of the accident and there was a proper document at the time of the accident as was contemplated in the policy. It is therefore submitted that the impugned Judgment and decree was erroneous. Therefore, the appellant-Insurance Company was not liable to pay the aforesaid compensation.

10. I have heard the learned counsel for the appellant and I have perused the impugned Judgment and decree and the evidence and the case laws cited by the learned counsel for the appellant - Insurance Company.

11. The 1st respondent-claimant was not the rider. Therefore, the P.A.cover which is contractual in nature will not cover the risk of the owner to the pillion rider. The 1st respondent/claimant also was not the third party. Therefore, the statutory liable under Section 147 also does not come to her rescue. Therefore, the Tribunal erred in fixing the liability on the appellant-Insurance Company. The impugned order is therefore liable to be set aside.

12. Consequently, the impugned Judgment and decree passed by the Tribunal is liable to be set aside and accordingly the present civil miscellaneous appeal has to be allowed. However, liberty is given to the 1st respondent to recover the amount from the owner of the insured motorcycle in accordance with law.

13. This civil miscellaneous appeal is allowed with the above observation. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kkd

To:

1. The Motor Accidents Claims Tribunal,
(Principal Sub Judge) Pondicherry.

2. The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.39888

C.M.A.No.3648 of 2010
and M.P.No.1 of 2010

AK(CO)
CS/23/08/2021