IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.602 of 2012
and M.P.No.1 of 2012

United India Insurance Company Ltd,
No.38, Anna Salai,
Chennai - 2. ...Appellant/2nd Respondent

vs.

1.A.Ramesh ...1st Respondent/Petitioner

2.G.Venkatesh ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 1.12.2011 made in OP.No.1141 of 2005, on the file of the Motor Accident Claims Tribunal (In the IV Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.K.Varadha Kamaraj for R1
Not ready in notice - R2

JUDGMENT

This appeal has been filed by the Insurance Company challenging its liability under award dated 1.12.2011 passed by the Motor Accident Claims Tribunal (In the IV Court of Small Causes) Chennai, in MCOP.No.1141 of 2005.

Brief facts leading to the filing of this appeal:

2.The first respondent sustained injuries as a result of an accident while he was travelling as a pillion rider in a motor cycle bearing Registration No.TN-22-V-3745 insured with the Appellant and owned by the second respondent. The first respondent preferred a claim before the Motor Accident Claims Tribunal seeking compensation for the injuries sustained by him as a result of the accident.

3.The Motor Accident Claims Tribunal by its Award dated 1.12.2011, directed the Appellant as well as the second respondent jointly and severally to pay the first respondent a sum of Rs.1,60,500/- together with interest and costs.

4.Aggrieved by the same, the Insurance Company has preferred this Appeal.

5.Heard Mr.D.Bhaskaran, learned counsel for the Appellant and Mr.K.Varadha Kamaraj, learned counsel for the first respondent. The Second respondent has remained exparte both before the Tribunal as well as before this Court.

6.According to the Appellant Insurance Company, they are not liable to compensate the claim of the first respondent as the policy issued to the second respondent for his vehicle is a liability policy. According to them, since the first respondent/claimant was a pillion rider in the insured vehicle and the policy being a liability policy, they are not liable to compensate the first respondent, as no third party vehicle was involved in the accident and the first respondent cannot be treated as a third party. The learned counsel for the Appellant submitted that it is settled law that in case of liability policy, the Appellant insurance Company is not liable to compensate the pillion rider who sustained injuries due to the rash and negligent driving by the rider of the insured vehicle.

7.The learned counsel for the Appellant drew the attention of this Court to a Judgment of the Hon'ble Supreme Court reported in 2009 (17) SCC 301 (The General Manager, United India Insurance Company, Chennai vs. M/s.Laxmi and others), which has been followed by various earlier decisions of the Hon'ble Supreme Court as well as the High Courts. Relying upon the judgments, he would submit that it is settled law that in case of liability policy, the insurance company need not compensate the pillion rider who sustained injuries while travelling in the insured vehicle.

8.This court has perused and examined the impugned Award. As seen from the impugned Award as well as from the counter statement filed by the Appellant Insurance Company and the oral evidence let in by them, they have taken a consistent stand that they are not liable to compensate since the policy issued in favour of the first respondent is a liability policy. Despite evidence let in by the Appellant/Insurance Company and without considering the settled position of law, the Tribunal has erroneously passed an Award jointly and severally against the owner of the vehicle namely, the second respondent as well as the Appellant Insurance Company.

9.This Court has also perused the judgment cited by the learned counsel for the Appellant and is of the considered view that it is settled law that in case of liability policy, the pillion rider who is not a third party cannot be compensated by the insurer. If at all, the first respondent/claimant can only seek compensation from the owner of the insured vehicle.

10.For the foregoing reasons and in view of the settled position of law, the Award passed against the Appellant Insurance Company by the Tribunal is erroneous and is not in accordance with law and it has to be set aside.

11.In the result, the appeal shall stand allowed. The Award passed against the Appellant Insurance Company by the Tribunal in MCOP.No.1141 of 2005 is set aside and the Appellant is exonerated from any liability. However, the first respondent/claimant is at liberty to proceed against the second respondent/owner of the motor cycle for the sum awarded by the Tribunal in his favour under the impugned Award.

12.It is represented by the learned counsel for the Appellant that the Appellant Insurance Company subsequent to the filing of this appeal has deposited 50% of the Award amount to the credit of MCOP.No.1141 of 2005. Since the Appeal is allowed, the Appellant is permitted to withdraw the available amount lying to the credit of MCOP.No.1141 of 2005 by filing an appropriate application. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
(In the IV Court of Small Causes), Chennai.

2.The Section Officer,
Vernacular Section,
Madras High Court.

C.M.A.No.602 of 2012

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srg 22/01/2021