

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.08.2020

Pronounced on: 25.08.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2371 of 2016

and

C.M.P.No.16491 of 2016

The New India Assurance Co.Ltd.,
Branch Office, Thiru-Vi-Ka Road,
Villupuram.

...Appellant /3rd Respondent

/versus/

1.J.Manimaran

2.The Proprietor,
UDSR Rolling Mill,
Thandarampet, Tiruvannamalai.

3.P.Kumar ...Respondents/Petitioner & Respondents 1 & 2

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment made in M.C.O.P.No.178 of 2013 dated 03.11.2015 on the file of the Motor Accident Claims Tribunal, (MACT Special Sub Court II), Villupuram.

For Appellant : Mr. M.Krishnamoorthy
For R1 : Mr.K.Varadhakamaraj
For R2 & R3 : Exparte

J U D G M E N T

(The case has been heard through video conference)

This appeal has been filed by the Insurance company challenging the insurer liability when admittedly the offending vehicle was not insured under it.

2. The facts required for deciding this appeal are:-

On 15/01/2011, while the claimant Manimaran was riding on his motorcycle bearing registration No. TN 22 AK 1103 with his wife and daughter, a Bajaj motor cycle bearing registration No. TN 25 F 1355 dashed against him and caused accident. In the said accident, he sustained injuries and treated. Alleging rash and negligence against the rider of the motor cycle bearing

registration No. TN 25 F 1355, claim petition was filed seeking compensation of Rs.3,50,000/- against the owners of the offending motor cycle Bajaj TN 25 F 1355 and TN 22 AK 1103 and the insurance company of the TN 22 AK 1103. The claimant in the claim petition has specifically stated that, the negligence was on the part of the bajaj motor cycle rider, the offending vehicle was not insured by its owner the first respondent, being a third party and the vehicle he drove is insured under the third respondent by its owner the second respondent, the respondents 1 to 3 are jointly and severely liable to compensate him.

3. The Insurance Company contested the claim on the grounds that, the alleged date of accident is 15/01/2011, but complaint to the police was given only after 3 days. The motor cycle bearing registration No. TN 25 F 1355 was the offending vehicle. The rider of that vehicle was not having valid driving license. The cause of accident was the negligence of the Bajaj motorcycle rider. Knowing the fact that the rider of the offending vehicle does not possess driving license, the third respondent Insurance Company is impleaded. Only the first respondent who is the owner of the offending vehicle is responsible for compensation payable, if any.

4. The Tribunal rejected the plea of the Insurance Company and passed an award for Rs.1,22,211/- and fastened the liability on the Insurance Company.

5. In this appeal, the Insurance Company impugned the Tribunal award on the ground that, the Tribunal overlooked the fact that the claimant had pleaded negligence only on the oncoming Bajaj Motorcyclist. It failed to note that the liability of the insurer is to indemnify the insured. The liability of the insured/owner will arise only for the tort committed by his driver. While the pleading of the claimant and the finding of the Tribunal prove the rider of the uninsured Bajaj motorcycle was responsible for the accident, so, no liability can be fastened on the appellant.

6. In this case, the two wheeler driven by the claimant stands in the name of the second respondent. The claimant has borrowed the vehicle from the second respondent and met with the accident due to the negligence of the offending motorcycle rider. The Tribunal going through the terms of the policy note marked as Ex.P-5, has held that, it is a " Standard Two Wheeler Package Policy". An additional premium of Rs.138/- paid towards " OD Premium " this amount has been paid for "compulsory PA covers for owner Driver". Being a comprehensive policy/package policy, the Insurance Company cannot deny its liability.

7. The Tribunal has relied upon the judgement of the Hon'ble Supreme Court in National Insurance Co -vs -Balakrishnan and another (2013-1-SCC 731) for why the Insurance Company

cannot deny its liability.

8. To be noted, this petition is filed under Section 166 of the Motor Vehicles Act. The claimant is a third party. He attributes negligence on the uninsured vehicle owner. If we consider him as representative of owner and hold he enter into the shoes of the owner, then the policy being a comprehensive policy, with additional premium, the Insurance Company is liable. If he is to be treated as third party, then also the Insurance Company cannot escape the liability having collected premium for comprehensive policy/package policy.

9. In Ningamma & Anr. v. United India Insurance Company Limited, II (2009) ACC 804 (SC)=(2009) 13 SCC 710, the question of grant of compensation in a Petition under Section 163-A of the Act for a person who died while driving a two-wheeler borrowed from the owner, came for consideration. The Hon'ble Supreme Court held that in a Claim Petition under Section 163-A of the Act, the Claimants are not required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of the vehicle concerned. Further, it was observed that where a person borrows a vehicle from the owner he steps into the shoes of the owner. The insured or the legal representatives of the victim in such circumstances cannot claim any compensation from the owner of that very vehicle. The said logic will not apply to the claim petition filed under Section 166 of Motor Vehicles Act.

10. Therefore, this court finds that the Tribunal finding need no interference by this court. Accordingly, the Civil Miscellaneous Appeal is dismissed. Tribunal award is confirmed. Consequently, the connected Civil Miscellaneous Petition is also closed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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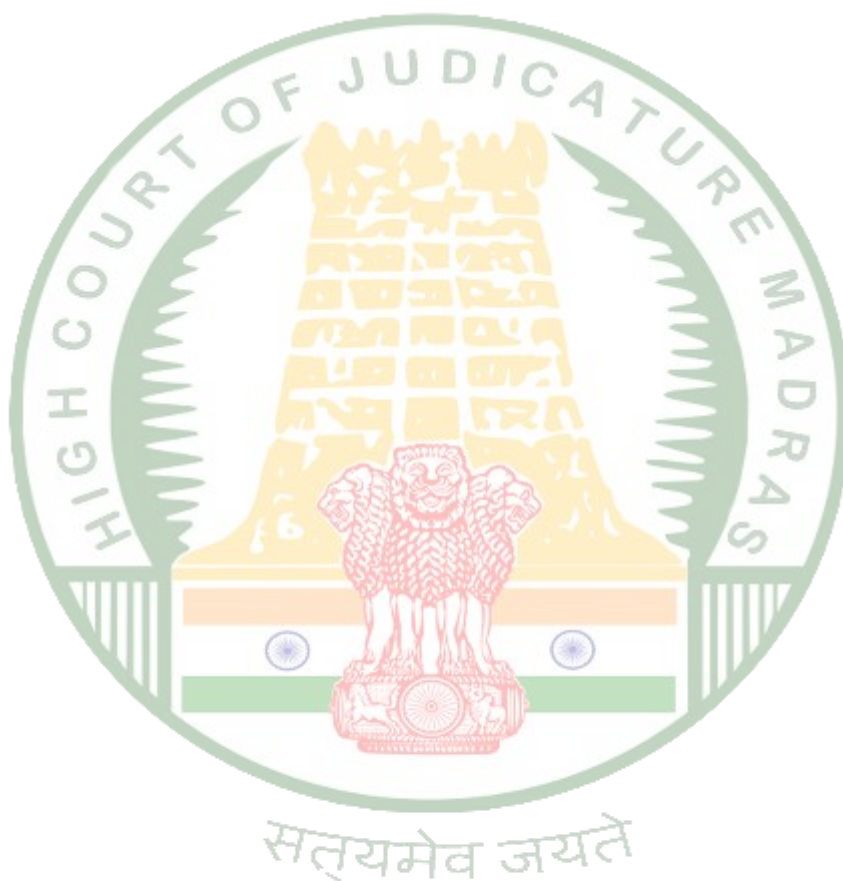
1.The Motor Accident Claims Tribunal,
(MACT Special Sub Court II),
Villupuram.

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No. 27961

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PA (CO)
GN(22/04/2021)



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