IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.904 of 2018
and C.M.P.No.7487 of 2018

The Divisional Manager
The United India Insurance
Company Limited
Branch Office, No.5/B-11, SBI Upstair
Salem road, Rasipuram-637 408. ... Appellant /II Respondent

Vs.

1.Gomathi ...1st Respondent/Respondent

2.Suresh ...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.10.2017 made in M.C.O.P.No.1127 of 2016 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal.

For Appellant : Ms.I.Malar

For R1 : Mr.C.Kulanthaivel

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 24.10.2017 made in M.C.O.P.No.1127 of 2016 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.1127 of 2016 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Namakkal. The 1st respondent filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her in the accident that took place on 30.12.2014.

3.According to the 1st respondent, on the date of accident i.e. on 30.12.2014 at about 04.00 p.m., on Rasipuram to Namakkal main road, near Gandhipuram Valluvar street, while the 1st respondent was travelling as pillion rider in a two wheeler, the rider of the two wheeler rode the same in a rash and negligent manner, hit against a man who was standing in the road and caused the accident. In the accident, the 1st respondent sustained grievous injuries and therefore, she has filed the above claim petition claiming compensation.

4.The 2nd respondent/owner-cum-rider of the motorcycle remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made by the 1st respondent and contended that the 1st respondent travelled as a pillion rider in the motorcycle, she is not a third party in the accident and she travelled only as a gratuitous passenger. The policy taken by the 1st respondent is only 'Act Policy'. The said policy does not cover the gratuitous passenger and covers only third party. Therefore, the appellant/Insurance Company is not liable to pay compensation.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Dr.Sivalingam was examined as P.W.2 and marked fourteen documents as Exs.P1 to P14. On the side of the appellant/Insurance Company, one Palanisamy, officer of the Insurance Company was examined as RW1 and did not file any document.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the 2nd respondent/rider of the motorcycle and directed the appellant/Insurance Company to pay a sum of Rs.2,52,800/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent.

8.Against the said award dated 24.10.2017 made in M.C.O.P.No.1127 of 2016, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal questioning the liability fastened on them.

9.The learned counsel appearing for the appellant/Insurance Company contended that the policy issued by the appellant to the offending vehicle is only Act Policy. The appellant has let in evidence to prove that Ex.P3/copy of insurance policy is only Act Policy covering third party and not pillion rider. The Tribunal having held that Ex.P3 is only Act Policy, erred in ordering pay and recovery and prayed for allowing this appeal.

10.Per contra, the learned counsel appearing for the 1st respondent/claimant contended that the policy issued by the appellant was in force at the time of accident. The 1st respondent is third party to the policy of contract between the appellant and 2nd respondent. Therefore, award of the Tribunal ordering pay and recovery is valid and prayed for dismissal of the appeal.

11.Though notice was served on the 2nd respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

12.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the 1st respondent and perused all the materials available on record.

13.From the materials available on record, it is seen that the 2nd respondent is owner of the motorcycle and the 1st respondent/claimant is his wife. The accident has occurred while the 1st respondent was travelling as pillion rider in the motorcycle driven by her husband/2nd respondent herein. The 1st respondent claimed compensation for the injuries based on Ex.P3/insurance policy issued by the appellant/Insurance Company to the 2nd respondent. It is the case of the appellant that Ex.P3/insurance policy is only Act Policy, which does not cover the liability of pillion rider. The appellant examined R.W.1/officer of the Insurance Company, who deposed to that effect. The Tribunal considering Ex.P3/insurance policy as well as the evidence of R.W.1 held that Ex.P3/insurance policy is only Act Policy. Having held so, the Tribunal erred in ordering pay and recovery. It is well settled that in Act Only Policy, the rider of the motorcycle as well as pillion rider travelling in a two wheeler and the passengers travelling in four wheeler are not covered by the said policy. In view of the well settled judicial pronouncement, the portion of the award passed by the Tribunal directing the appellant/Insurance Company to pay the compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent is liable to be set aside and the same is hereby set aside. The 2nd respondent/owner of the motorcycle alone is liable to pay compensation to the 1st respondent.

14.In the result, this Civil Miscellaneous Appeal is allowed and the sum of Rs.2,52,800/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. The 2nd respondent is directed to deposit the entire amount awarded by the Tribunal along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the entire award amount lying in the deposit to the credit of M.C.O.P.No.1127 of 2016, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To
1.The Chief Judicial Magistrate
Motor Accidents Claims Tribunal
Namakkal.

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

+1cc to Mr.C.Kulanthaivel, Advocate SR.6766
+1cc to M/s.I.Malar, Advocate Sr.6095

BS(CO)
CB(10/09/2020)