



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.1285 & 1604 of 2016 &  
CMP.Nos.9923 & 9924 of 2016

CMA.No.1285 of 2016

National Insurance Co. Ltd.,  
Third Party Claims Office,  
No.751, Mount Road,  
Chennai - 600 002.

... Appellant/2<sup>nd</sup> Respondent

Vs

1.K.Hariraj  
2.M.Jayasankar

... 1<sup>st</sup> Respondent/ Petitioner  
... 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgement and Decree dated 21.01.2016 and made in M.C.O.P.No.6274 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1 to deal with MCOP cases) Chennai.

|                  |   |                    |
|------------------|---|--------------------|
| For Appellant    | : | Mr.S.Vadivel       |
| For Respondent 1 | : | Mrs.Saleem Fathima |
| R2               | : | Exparte            |

CMA.No.1604 of 2016

K.Hariraj

... Appellant/Petitioner

Vs

1.M.Jayasankar  
2.National Insurance Co. Ltd.,  
Third Party Claims Office,  
No.751, Mount Road,  
Chennai - 600 002.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgement and Decree dated 21.01.2016 and made in M.C.O.P.No.6274 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1 to deal with MCOP cases) Chennai.



WEB COPY

For Appellant : Mrs.Saleem Fathima  
For Respondent 2 : Mr.S.Vadivel  
R1 : Exparte

JUDGMENT

CMA.No.1285 of 2016 has been filed by the Insurance Company challenging its liability under the Award dated 21.01.2016 passed by the Motor Accident Claims Tribunal (Special Sub Court No.1 to deal with MCOP cases, Chennai) in MCOP.No.6274 of 2013 and CMA.No.1604 of 2016 has been filed by the claimant challenging the very same award dated 21.01.2016 seeking for enhancement of compensation.

2. Heard Mr.S.Vadivel, learned counsel for the Insurance Company who is the Appellant in CMA.No.1285 of 2016 and Mrs.Saleem Fathima, learned counsel for the claimant who is the Appellant in CMA.No.1604 of 2016. Since no adverse orders are going to be passed against the owner of the vehicle who is the second respondent in CMA.No.1285 of 2016 as well as the first respondent in CMA.No.1604 of 2016, notice to him is dispensed with by this Court.

3. The claimant Hariraj was a pillion rider in a motor cycle bearing registration No.TN22AA9590. While he was traveling on 10.08.2013, the said motor cycle dashed against another motor cycle bearing registration No.TN22L1879 which was coming from the opposite direction which resulted in the claimant sustaining grievous injuries.

4. The Motor Accident Claims Tribunal directed the Insurance Company to pay the claimant a compensation of Rs.2,34,550/- together with interest and costs as detailed hereunder:

| Heads                                           | Award amount<br>(Rs.)  |
|-------------------------------------------------|------------------------|
| Expenses relating to treatment, hospitalisation | 8,550/-                |
| Loss of earning during treatment                | 39,000/-<br>(6500 x 6) |
| Expenses towards conveyance                     | 6,000/-                |
| Extra Nourishment costs                         | 5,000/-                |
| Attender charges                                | 6,000/-                |
| Damages to clothing and articles                | 1,000/-                |



WEB COPY

| Heads                                     | Award amount<br>(Rs.)    |
|-------------------------------------------|--------------------------|
| Compensation for disability               | 84,000/-<br>(3,000 x 28) |
| Pain and sufferings                       | 50,000/-                 |
| Compensation for Loss of future amenities | 25,000/-                 |
| Loss of expectation of life               | 10,000/-                 |
| Total                                     | 2,34,500/-               |

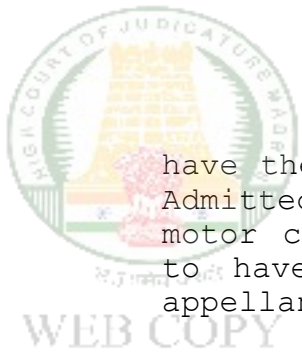
5. Aggrieved by the above referred Award, the insurance company has filed the appeal CMA.No.1285 of 2016 questioning its liability on the ground that the claimant Hariraj is not a third party and hence, being a pillion rider in the motor cycle bearing registration No.TN22AA9590 which was insured with the Appellant Insurance company, they are not liable to pay the compensation to him. According to them, the Tribunal without perusing the insurance policy for the motor cycle bearing registration No.TN22AA9590 has mulcted the liability on the Appellant Insurance Company.

6. Admittedly, the Insurance policy for the motor cycle bearing registration No.TN22AA9590 was not marked as an exhibit before the Tribunal. Therefore, there was no occasion for the Tribunal to peruse the same which resulted in the Tribunal mulcting the liability on the Insurance company.

7. CMP.No.9924 of 2016 has been filed by the Insurance company along with this Appeal under Order XLI Rule 21 CPC seeking permission to mark a copy of the Insurance Policy for the motor cycle bearing registration No.TN22AA9590 which was not marked before the Tribunal. They have also given sufficient reasons in the affidavit filed in support of this CMP.No.9924 of 2016 for not filing the same before the Tribunal. The same is accepted by this Court. Accordingly, CMP.No.9924 of 2016 is allowed as prayed for.

8. Admittedly, as seen from the above, the insurance policy was not marked as an exhibit before the Tribunal. Before the Tribunal, neither any document was filed nor any witness examined on the side of the Insurance Company.

9. The insurance policy is crucial for the purpose of deciding as to whether the Insurance Company is liable to pay the compensation to the claimant or not. However, due to non-filing of the same before the Tribunal, the Tribunal did not



have the opportunity to peruse and examine the insurance policy. Admittedly, the claimant Hariraj was a pillion rider in the motor cycle bearing registration No.TN22AA9590 which is alleged to have been insured with the Insurance company who is the appellant in CMA.No.1285 of 2016.

10. The case of the Insurance company is that the claimant Hariraj was a pillion rider in the motor cycle which is insured by them is not a third party and hence, they are not liable to pay compensation to him. However, it is the contention of the claimant who is the Appellant in CMA.No.1604 of 2016 that he is a third party as he was only a pillion rider and not the rider of the vehicle which was involved in the accident.

11. All the abovementioned factors will have to be considered by the Tribunal and this Court is of the considered view that the Tribunal did not have the opportunity to consider all those factors and also did not have the opportunity to peruse and examine the insurance policy which has been filed before this Court by the Appellant in CMA.No.1285 of 2016.

12. This Court after giving due consideration to the aforementioned factors, is of the considered view that the matter will have to be remanded back to the Tribunal for fresh consideration and the Tribunal shall consider the oral and documentary evidence placed by the respective parties and also permit them to adduce further evidence and thereafter adjudicate the issue on merits and in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the matter.

13. Insofar as CMA.No.1604 of 2016 filed by the claimant Hariraj seeking for enhancement is concerned, the Tribunal is empowered to once again consider the claim afresh and decide whether the claimant is entitled for a higher compensation or not.

14. For the foregoing reasons, the impugned award dated 21.01.2016 passed by the Motor Accident Claims Tribunal (Special Sub Court No-1 to deal with MCOP cases), Chennai in MCOP.No.6274 of 2013 is hereby quashed and the matter is remanded back to the very same Tribunal for fresh consideration and the respective parties are permitted to adduce fresh evidence, if so required in addition to the existing evidence available on record and the Tribunal shall consider the same on merits and in accordance with law after affording sufficient opportunity to both the parties and pass final Award within a period of four months from the date of the lockdown imposed by the Government getting completely relaxed.



15. In the result, these Civil Miscellaneous Appeals are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nl

To

1.The Special Sub Court No.1 to deal with MCOP cases,  
(Motor Accident Claims Tribunal)  
Chennai.

2.The Section Officer,  
V.R.Section, High Court of Madras.

+1cc to Mr.S.Vadivel, Advocate Sr.No.29861

C.M.A.Nos.1285 & 1604 of 2016

PA (CO)

PR (21/10/2021)