



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1029 of 2014

M/s.United India Insurance Company Ltd.,
No.58, Purasawakkam High Road
Chennai-7.

.. Appellant/2nd Respondent

Vs.

1.Abdul Majeeth

2.Ameer Nisha

3.K.Malica

...1 & 2 Respondent/1st & II Petitioners

..3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.03.2013 in M.A.C.T.O.P.No.1533 of 2010 on the file of the Motor Accident Claims Tribunal, X Additional Judge I/C of XVI Additional Court, Chennai.

For Appellant :Mrs.R.Rathna Thara

For Respondents :Mr.S.Parthasarathy for R1 & R2
R3-Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 08.03.2013 in M.A.C.T.O.P.No.1533 of 2010 on the file of the Motor Accident Claims Tribunal, X Additional Judge I/C of XVI Additional Court, Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.A.C.T.O.P.No.1533 of 2010 on the file of the Motor Accident Claims Tribunal, X Additional Judge I/C of XVI Additional Court, Chennai. The respondents 1 and 2 filed the said claim petition against the 3rd respondent and the appellant/Insurance Company, claiming a sum of Rs.15,00,000/- as compensation for the death of their daughter Annees Fathima , who died in the accident that



took place on 30.10.2009.

3. According to the respondents 1 and 2, on 30.10.2009 at about 17.05 hours, while their daughter Annees Fathima was travelling as a pillion rider in the motorcycle bearing Registration No. TN 07 X 2134 belonging to the 3rd respondent from Uthandi to Kovalam in ECR Road, the rider of the motorcycle rode the same in a rash and negligent manner and dashed on the pillar in the road side. Due to the injuries sustained in the accident, their daughter died. Therefore, they claimed compensation against the appellant and 3rd respondent as insurer and owner of the motorcycle respectively.

4. The owner of the motorcycle, 3rd respondent herein remained exparte before the Tribunal. Hence, notice to the 3rd respondent is dispensed with.

5. The appellant/Insurance Company filed counter statement and stated that three persons traveled in the motorcycle at the time of accident. The appellant also filed additional counter statement and stated that the policy issued by the appellant for offending vehicle was only an Act Policy and it does not cover the risk of pillion rider and hence the appellant is not liable to pay any compensation to the respondents 1 and 2 and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 2nd respondent, mother of the deceased examined herself as P.W.1 and one Ashok Kumar, eye-witness was examined as P.W.2 and marked 4 documents as Exs. P1 to P4. On the side of the appellant/Insurance Company, one Murugesan, Official of Insurance Company was examined as R.W.1 and copy of Insurance Policy was marked as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle, at the time of accident, three persons have traveled in the motorcycle, contrary to the statute, the deceased also contributed negligence to the accident, fixed 25% on the deceased and 75% on the rider of the motorcycle and awarded a sum of Rs.3,80,000/- as compensation to the respondents 1 and 2. The Tribunal further held that the Policy issued by the appellant is Act Policy and liability of pillion rider is not covered in the Policy, ordered pay and recovery, directing the appellant/Insurance Company to pay a sum of Rs.2,85,000/- being 75% of the award amount as compensation to the respondents 1 and 2 and recover the same from the 3rd respondent, owner of the motorcycle, in the interest of



justice.

8. Against the said award dated 08.03.2013 in M.A.C.T.O.P.No.1533 of 2010, the insurer of the Taros Trailer has come out with the C.M.A.No.44 of 2014.

9. The learned counsel appearing for the appellant/Insurance Company contended that the Policy issued by the appellant is only an Act Policy and it does not cover the risk of pillion rider. Only when comprehensive policy is taken by the owner of the vehicle, the pillion rider can be treated as third party. The Tribunal ought to have fixed entire liability on the 3rd respondent, owner of the vehicle. The Tribunal having held that the risk of pillion rider is not covered in the Act Policy, as per the judgment of the Hon'ble Apex Court, erroneously ordered pay and recovery. The learned counsel appearing for the appellant also made submissions that the Tribunal ought to have fixed entire negligence on the deceased instead of fixing 25% negligence on the deceased. In support of his contention, the learned counsel relied on the judgment of the Hon'ble Apex Court reported in 2008 ACJ 2045 (Oriental Insurance Company Limited vs. Sudhakaran K.V and others), wherein the relevant paragraph reads as follows:

"19. The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; and (iii) the pillion rider on a two-wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

10. Per contra, the learned counsel appearing for the respondents 1 and 2 submitted that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 3rd respondent and insured with the appellant. The Tribunal considering the materials placed before it, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 3rd respondent but erroneously fixed 25% negligence on the part of the deceased. The



Tribunal considering the fact that policy issued is only an Act policy and the Motor Vehicles Act is beneficial legislation, in the interest of justice, ordered pay and recovery and prayed for dismissal of the appeal.

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11. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 1 and 2 and perused the entire materials available on record. The 3rd respondent, owner of the motorcycle remained exparte before the Tribunal and hence, notice to the 3rd respondent, owner of the motorcycle is dispensed with.

12. The only issue to be decided in the Civil Miscellaneous Appeal is whether the Tribunal is right in ordering pay and recovery, directing the appellant to pay the compensation at the first instance and recover the same from the 3rd respondent, owner of the vehicle.

13. It is an admitted fact that while the deceased was travelling as a pillion rider in the motorcycle, driven by the rider of the motorcycle the accident has occurred and the deceased died due to the injuries sustained in the accident. It is also admitted that the Policy issued by the appellant is only an Act Policy and that no extra premium was paid to cover the risk of pillion rider. It is well settled by the judgments of the Hon'ble Apex Court as well as this Court, if the owner of the offending vehicle has taken only an Act Policy and has not paid any extra premium to cover the risk of pillion rider, the Insurance Company is not liable to pay the compensation for the injuries sustained or for the death of the pillion rider caused in the accident, due to negligence of the rider of the two wheeler. The pillion rider cannot be treated as a third party in the case of Act Policy. The judgment reported in 2008 ACJ 2045 (Oriental Insurance Company Limited vs. Sudhakaran K.V and others), relied on by the learned counsel appearing for the appellant/Insurance Company is squarely applicable to the facts of the present case, wherein, the Hon'ble Apex Court held that the Insurance Company is not liable to pay the compensation to the pillion rider, when the Policy issued is an Act Policy and no extra premium is paid to cover the risk of pillion rider. In the present case, the Tribunal having held that the risk of pillion rider is not covered by the Policy issued by the appellant, erroneously ordered pay and recovery. In view of the well settled judicial pronouncement, the portion of award of the Tribunal ordering pay and recovery alone is set aside and the appellant is not liable to pay any compensation. The 3rd respondent alone is liable to pay compensation to the respondents 1 and 2.



14. In the result, this Civil Miscellaneous Appeal is allowed and the amount awarded by the Tribunal at Rs.3,80,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 3rd respondent, owner of the vehicle is directed to deposit a sum of Rs.2,85,000/- being 75% of the award amount along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.A.C.T.O.P.No.1533 of 2010. On such deposit, the respondents 1 and 2 are permitted to withdraw the award amount, along with interest and costs, as per the apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the award amount, lying in the deposit to the credit of M.A.C.T.O.P.No.1533 of 2010, if the entire award amount has already been deposited by them. Both the learned counsel appearing for the appellant/Insurance Company and respondents 1 and 2 submitted that as per the order of this Court, the appellant/Insurance Company has already deposited 50% of the award amount and the respondents 1 and 2 have withdrawn the same. It is made clear that if the respondents 1 and 2/claimants have already withdrawn the award amount, the appellant/Insurance Company is not entitled to recover the same from the respondents 1 and 2/claimants. It is open to the appellant/Insurance Company to recover the same from the 3rd respondent, owner of the vehicle. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

vkr

To

1.The XVI Additional Judge,
Motor Accident Claims Tribunal,
Chennai.

+1cc to Mr.S.Parthasarathy, Advocate SR.No.61055

C.M.A.No.1029 of 2014

SRA(CO)

CB(05/01/2022)