BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 17.09.2021
Delivered on : 17.11.2021
CORAM:
THE HONOURABLE MRS.JUSTICE R.THARANI
C.M.A(MD) No.1971 of 2013

The General Manager,
United India Insurance Co. Ltd.,
1A, Thanjavur Main Road,
Thiruvarambur, Tiruchirappalli,
Branch Office,
United India Insurance Company Ltd.,
Divisional Office, 2 Salai Road,
Tiruchirappalli - 18 ... Appellant / 2nd Respondent

Vs.

1.Maragathamani ... 1st Respondent / Claimant
2.Chinnaiyan ... 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 28.12.2012, passed in M.C.O.P.No.593 of 2006 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Trichy and to set aside the same.

For Appellant : Mr.G.Prabhu Rajadurai
For R1 : Mr.N.Sudhagar Nagaraj
For R2 : No appearance

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JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 28.12.2012, passed in M.C.O.P.No.593 of 2006 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Trichy

2.The appellant herein is the second respondent and the first respondent herein is the claimant and the second respondent herein is the first respondent in the original claim petition.

3.Brief substance of the petition in M.C.O.P.No. 593 of 2006 is as follows:-

On 23.01.2005, at about, 5.00 a.m., one Pradeep was riding a two wheeler that belonged to the first respondent along with a boy viz., Sivakumar, as pillion rider along the Karur to Trichy main road, near Mayanoor bridge, in a rash and negligent manner and that Sivakumar fell down from the vehicle and died on the spot itself. On the date of the accident, the deceased was studying in an

Engineering College. The father of the deceased is the owner of the two wheeler. The claimant, who is the mother of the deceased, claimed a sum of Rs.10,00,000/- as compensation.

4.Brief substance of the counter filed by the respondents in M.C.O.P.No. 593 of 2006 is as follows:-

The manner of the accident is denied. There is violation of policy condition. F.I.R was lodged against the rider of the vehicle. There is no coverage for pillion rider. The claim is excessive.

5.On the side of the petitioner, two witnesses were examined and eight documents were marked. On the side of the respondents, one witness was examined and one document was marked.

6.The Tribunal, after considering both sides, awarded a sum of Rs.6,51,072/- as compensation. Against the same, the second respondent / appellant has preferred this Appeal.

7.On the side of the appellant, it is stated that pillion rider is expressly excluded from the terms of the Act policy and the Tribunal failed to consider the same. The deceased was only a student and the Tribunal is erroneous in fixing Rs.4,000/- as monthly income. The Tribunal ought to have deducted 50% towards the personal expenses of the deceased. Instead of considering the age of the mother, the Tribunal erroneously calculated the loss of income by applying multiplier '18'. In the F.I.R, it is clearly stated that the deceased travelled only as a pillion rider. There is no policy coverage for the pillion rider. Only because the printings in the policy certificate is not clear, the Tribunal has fixed liability on the Insurance Company.

8.On the side of the appellant, a judgment of this Court reported in 2015-1-TNMAC-19 (DB) is cited, wherein it was held that an occupant of a private car cannot be considered as a 'third party' and the policy covered risks only to the third party and that the deceased was only an occupant of the private car and the said policy will not cover the risk of the deceased and the Doctrine of pay and recover cannot be applied to the facts of the case, since the appellant /Insurance company is not liable to pay compensation.

9.On the side of the appellant, it is further stated that a Circular of Tariff Advisory Committee is applicable only in case of comprehensive policy, whereas, policy in this case is Act policy. A judgment of the Hon'ble Supreme Court reported in 2009-ACJ-104 is cited, wherein, it was held that the legal obligation under Section 147 of the Motor Vehicles Act cannot be extended to injury or death of a owner or pillion rider.

10. On the side of the appellant, it is stated that a pillion rider in a two wheeler cannot be treated as 'third party', when the accident took place owing to the rash and negligent driving of the rider of the scooter. To substantiate this contention, a judgment of the Hon'ble Supreme Court reported in 2008-2-TNMAC-16 is cited.

11. On the side of the first respondent / claimant, it is stated that the policy was in force, at the time of accident. Pillion rider was not classified or excluded in the policy. At least pay and recover may be ordered.

12.Copy of the policy was marked as Ex.P6. A perusal of the policy certificate reveals that nothing was mentioned regarding the persons, who were covered under the policy and regarding the persons, who were not covered under the policy. The policy certificate is vague as to the liability. The appellant is claiming that the policy is Act only policy. The caption 'Act only policy' was not mentioned in the policy certificate. F.I.R and charge sheet were laid against the rider of the two wheeler. Driving licence of the rider of the two wheeler was also marked as Ex.P7. The policy was in force at the time of accident. The only allegation is that there was no coverage for the pillion rider. It is the duty of the Insurance Company to mention the particulars as to who are all covered under the policy and who all are not covered under the policy and the limitation of the policy, etc. As no such particulars are mentioned in the policy, it is decided that the appellant is liable to pay compensation.

13.Instead of deducting 50% towards personal expenses, the Tribunal has deducted only 1/3rd, which is erroneous. The notional income fixed by the Tribunal is reasonable. After deducting 50% towards the personal expenses, the loss of income is calculated at Rs.4,32,000/- (Rs.2,000/- X 12 X 18 = Rs.4,32,000/-). As per ***Pranay Sethi's Case***, the claimant is entitled for a sum of Rs.70,000/- towards conventional charges. Hence, it is decided that the claimant is entitled for Rs.5,02,000/- as compensation.

14.This Civil Miscellaneous Appeal is partly allowed and the award, 28.12.2012, passed in M.C.O.P.No.593 of 2006, on the file of the Motor Accidents Claims Tribunal - Chief Judicial Magistrate, Trichy, is reduced from Rs.6,51,072/- to Rs.5,02,000/-.

15.The appellant / Insurance Company is directed to deposit Rs.5,02,000/- (Rupees Five Lakhs Two Thousand only) along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the first respondent / claimant is permitted to withdraw the entire award amount, after deducting amount, if any, already received by her. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ls

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal
Trichy.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-34912[F] dated 18/11/2021)

Judgment made in
C.M.A(MD)No.1971 of 2013
17.11.2021

DJ(CO)
GC(08.02.2022) 4P 5C