BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 19.07.2021

Delivered On : 12.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.766 of 2016
and
C.M.P.(MD)No.7427 of 2016

The Branch Manager,
The New India Assurance Company Ltd.,
No.85-B, Market Road,
Tanjore. .. Appellant/2nd Respondent

Vs.

1.Santhana Krishnan .. 1st Respondent/ Petitioner
2.Ramesh .. 2nd Respondent/ 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 02.12.2015 made in M.C.O.P.No.284 of 2014, on the file of the learned Special Subordinate Judge, Tanjavur.

For Appellant	:	Mr.A.Ilango
For 1st Respondent	:	Mr.Anandan
For 2nd Respondent	:	No Appearance

ORDER

This Civil Miscellaneous Appeal has been filed against the judgment and decree passed in M.C.O.P.No.284 of 2014 dated 02.12.2015 on the file of the Special Subordinate Judge, Tanjore.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition. The claimant has filed a claim petition in M.C.O.P.No.284 of 2014, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 08.04.2013. The Tribunal has awarded a sum of Rs.92,272/- (Rupees Ninety Two Thousand Two Hundred and Seventy Two only) as compensation. Against which, the appellant has filed the present appeal.

3.A brief substance of the claim petition in M.C.O.P.No.284 of 2014 is as follows:

On 08.04.2013, the claimant travelled as a pillion rider in a two wheeler bearing registration No.TN-49-H-0988. The rider of the two wheeler drove the vehicle in a rash and negligent manner, dashed against a Bolero jeep bearing registration No.TN-19-G-0037. The claimant sustained injuries and he claimed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

4.A brief substance of the counter filed by the second respondent therein is as follows:

The mode of accident is denied. The accident occurred only due to rash and negligent driving of the driver of the car. The policy is an "act only policy". There is no necessity for the second respondent to pay any compensation and prayed the petition to be dismissed.

5.On the side of the claimant, two witnesses were examined and 11 documents were marked. On the side respondents in the claim petition, no witness was examined and no document was marked. After considering both the sides, the Tribunal has awarded a sum of Rs.92,272/- (Rupees Ninety Two Thousand Two Hundred and Seventy Two only) as compensation. Against which, the appellant has preferred this appeal.

6.On the side of the appellant, it is stated that the policy is an "act only policy" and it does not cover the injuries sustained by the pillion rider, who is an unauthorized passenger. In a statutory policy or act only policy, the liability towards injury suffered by a pillion rider is not covered under the policy and prayed the award to be set aside.

7.The learned counsel for the appellant would rely upon the judgment of the Hon'ble Apex Court in the case of ***United India Insurance Co. Ltd., v. Tilak Singh*** reported in ***2006 ACJ 271 (SC),*** wherein it is held that "*Insurance company owes no liability towards the injuries suffered by a person who was a pillion rider if the insurance policy was a statutory policy or act only policy and hence, it does not cover the risk or death or bodily injury to a gratuitous passenger.*"

8.The learned counsel for the appellant would rely upon the judgment of the Kerala High Court in the case of ***United India Insurance Co. Ltd., v. Anilkumar and others*** reported in ***2014 ACJ 1,*** wherein it is held that "*the appellant insurer is not liable to indemnify the insured since the respondent injured claimant was a gratuitous passenger, a pillion rider in a motor cycle.*"

9.The learned counsel for the appellant would rely upon the judgment of the Nagpur Bench of Bombay High Court in the case of ***New***

India Assurance Co. Ltd., v. Baban and others reported in ***2015 ACJ 262 (SC),*** wherein it is held that *"the Insurance company is not liable where the injured victim is a pillion rider under Act only policy as there was no proof of special contract or negligence to hold the owner or the insurer of the offending vehicle liable to pay compensation under the Act covering the risk of injury to third party."*

10.The learned counsel for the appellant would rely upon the judgment of this Court in the case of ***National Insurance Co. Ltd., v. M.Padmini and others*** reported in ***2017 (1) TNMAC 566,*** wherein it is stated as follows:

> *"Act policy though covers third party liability does not cover risk in respect of passengers."*

11.The learned counsel for the appellant would rely upon the judgment of this Court in the case of ***Branch Manager, United India Insurance Co. Ltd., v. Nagammal and two others*** reported in ***2009 (1) CTC 1,*** wherein it is stated as follows:

> *"Doctrine of pay and recovery which means that insurance company though not liable to pay compensation to claimant would pay same to him and then recover from owner of vehicle-such doctrine cannot be automatically applied in respect of liability in respect of passenger in goods vehicle unless such passenger falls within exception.....Doctrine of pay and recover cannot be automatically passed"*

12.The learned counsel for the appellant would rely upon the judgment of the Hon'ble Apex Court in the case of ***New India Insurance Co. Ltd., v. Sadanand Mukhi and others*** reported in ***2009 ACJ 998,*** wherein it is stated as follows:

> *"Contention on behalf of claimants that legislative policy underlining compulsory insurance cannot be held to exclude a rider though son of the owner, he would be a third party in relation to insurance company, accident was beyond anybody's control and that vehicle being a two-wheeler was more porne to accident-whether insurance company is liable-held: no; whosoever becomes victim of accident arising out of use of vehicle would not come within the purview of the term 'a person' under Section 147."*

13.On the side of the first respondent, it is stated that the first respondent was a pillion rider and he is a third party to the insurance policy and hence, pay and recovery should be ordered. The insurance company can pay the compensation and then recover it from the owner.

14.As per the judgment of the Hon'ble Supreme Court cited by the appellant, it is decided that the insurance company is not liable to pay compensation. The owner of the vehicle is liable to pay compensation to the first respondent. The compensation awarded by the Tribunal is reasonable.

15.In the policy certificate, the persons covered under the policy, who were not be covered under the policy, limitation of liability whether own damage liability was included were not mentioned. The appellant is hereby directed to mention all these particulars in visible letters in the policy certificate to be issued in future.

16.With the above direction, this Civil Miscellaneous Appeal is **allowed**. The first respondent is entitled to a sum of Rs.92,272/- (Rupees Ninety Two Thousand Two Hundred and Seventy Two only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

17.The second respondent herein is directed to deposit the above said amount if not deposited earlier, within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the award amount after deducting any amount received by him earlier. Excess amount, if any, deposited shall be refunded to the second respondent. The claimant is not entitled to the interest for the default period, if any. No Costs. Consequently, connected miscellaneous petition is closed. The Registry is directed to send a copy of this judgment to the Chairperson, Insurance Regulatory Development Authority of India, Hyderabad.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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 Chairperson,
Insurance Regulatory Development Authority of India,
Hyderabad.

2.The Special Sub Judge, Motor Accident Claims Tribunal,
The Special Sub Court,
Thanjavur.

3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A.(MD)No.766 of 2016
12.08.2021

RK(29.09.2021) 5P 5C