IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : **26.09.2022**

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2647 of 2014

The Branch Manager,
The Oriental Insurance Company Limited,
B.O.Subha Govindam Building,
Imperial Road,
Cuddalore – 2. ... Appellant/2nd Respondent

Vs.

1.A.Saraswathi ...1st Respondent/Petitioner

2.G.Iyyadurai …2nd Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 28.01.2014 in M.C.O.P.No.415 of 2011 on the file of the learned II Additional Subordinate Judge, Motor Accidents Claims Tribunal, Cuddalore.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.D.S.Thirumavalavan for R1

R2 – served – No appearance

JUDGMENT

The Insurance Company has challenged the Award passed by the the learned II Additional Subordinate Judge, Motor Accidents Claims Tribunal, Cuddalore, in M.C.O.P.No.415 of 2011, in and by which the learned Judge has mulcted the liability to compensate the 1st respondent/petitioner upon the appellant/Insurance Company.

2.The appellant is aggrieved by the fact that although the First Information Report had shown the driver of Van as the person responsible for the accident the petitioner has not impleaded the owner and the insurer of the van bearing Registration No.TN 31AB 6329. Further, the motor cycle bearing Registration No.TN 31V 8033 belonging to the 1st respondent is insured with the 2nd respondent with an Act only policy which does not cover the pillion rider. Hence, the Award passed by the Tribunal is totally erroneous.

3.A perusal of the facts would show that the petitioner is one filed under Section 163A of the Motor Vehicles Act. The case of the appellant is that it is only on account of the negligence on the part of the driver of the van that the said Van had collided with the motor cycle in which the petitioner was travelled as a Pillion rider. The First Information Report has been lodged against the driver of the said van. The petitioners have however not included the owner and the insurer of the van.

4.The Tribunal has relied upon the Judgment in **2007 ACJ 2014 [United India Insurance Company Limited v. Rekha and others**], wherein the claim petition was filed under Section 163A of the Act for the death of the motor cyclist when collided with the other vehicle. The legal representatives similarly filed a case claiming compensation under Section 163A of the Act and the Tribunal had allowed the compensation against the Insurance Company. In the appeal filed, the Insurance Company had taken out a plea that the claim petition filed by the negligent victim under Section 163A of the Act would be maintainable. The Tribunal had answered in the affirmative and the Appellate Court had confirmed the Award.

5.A perusal of the Insurance Policy would clearly show that the same is only an act only policy and would cover only the owner -cum-driver and not the pillion rider. The Insurance Company has relied upon the Judgment in **AIR 2006 SC 1576 [United India Insurance Company Limited, Shimla v. Tilak Singh and others]**, where the question involved was *whether s statutory insurance policy under the Motor Vehicles Act, 1988, intended to cover the risk to life or damage to properties of third parties, would cover the risk of death or injury to a gratuitous passenger earned ina private vehicle?.*". This was a case where the owner of the scooter has insured his vehicle with the

Insurance Company. The Insurance Policy covering the scooter did not contain the clause covering the unnamed hirer or pillion rider. The vehicle had met with an accident and the Bench referred to the various judicial pronouncements and ultimately, at Para 16, held as follows:

> *"16.In our view, although the observation made in Asha Rani's case (supra) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-insurance company that it owed no liability toward the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to gratuitous passenger."*

6.The Division Bench of our High Court in **I (2016) ACC 514 (Mad,) [The New India Assurance Company Limited v. S.Krishnasamy]** involved a claim filed by the legal representatives of the passenger in a private car which was covered only under an act policy. The Bench after discussing the law on the point ultimately held that since the policy is an act only policy the Insurance Company cannot be held liable as follows:

> *"20.This Circular relates to a Comprehensive Policy. Therefore, if it is a Comprehensive Policy, a gratuitous passenger in a Private Car is covered and if it is an Act Policy, it does not cover. The key term in the Policy is "Including occupants carried in the motor Car provided that such occupants are not carried for hire or reward." In the case on hand the Policy is an Act Policy and the deceased was a gratuitous passenger and therefore, the Appellants is not liable."*

7.Therefore, considering the fact that in the case on hand, the policy is an Act only policy and the petitioner is a pillion rider, the Insurance Company cannot be held liable. Therefore, this Civil Miscellaneous Appeal is allowed. The Insurance Company is exonerated and the claimant shall recover the Award amount from the Owner of the vehicle.

The learned counsel for the Insurance Company would submit that they have deposited the Award amount in pursuant to the orders of this Court, the same shall be refunded back to them. No costs.

26.09.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Cuddalore.

P.T. ASHA, J,

mps

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