IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2655 of 2014
and
M.P.No.1 of 2014

M/s. United India Insurance Company Limited,
Plot No.112, Thiruvalluvar Salai,
Thiruvanmiyur,
Chennai – 600 041. .. Appellant/2nd Respondent

Vs.

1.P.Jagadeesan

2.V.Mahalingam .. Respondents/Petitioner/1st Respondent

(R2 remained exparte in Lower Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.01.2013 made in M.C.O.P.No.2407 of 2007 on the file of the Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellant : Mr.M.B.Gopalan

For R1 : Mr.P.D.Selvaraj

For R2 : No appearance

J U D G M E N T

(The matter is heard through “Video Conferencing”)

This Civil Miscellaneous Appeal has been filed against the award dated 23.01.2013 made in M.C.O.P.No.2407 of 2007 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant is the 2nd respondent in M.C.O.P.No.2407 of 2007 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai. The 1st respondent filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.12.2003.

3.According to the 1st respondent, on 19.12.2003 at about 20.30 hours, while he was travelling as pillion rider in the motorcycle bearing Registration No.TN 04 E 2079 belonging to 2nd respondent and insured with appellant from Perungalathur to Porur on the 200 feet Bye-Pass Road, Pulikoradu, West Tambaram, Chennai, the rider of the motorcycle drove the same in a rash and negligent manner endangering public safety and dashed on the pedestrian who was coming from Perungalathur and caused the accident. In the accident, the 1st respondent sustained multiple grievous injuries all over his body. After the accident, the 1st respondent was taken to Government General Hospital, Chennai, where he has taken inpatient treatment from 19.12.2003 to 21.12.2003. Thereafter, he was shifted to The Best Hospital Private Limited, Kodambakkam, Chennai - 600 024, where he has taken inpatient treatment from 22.12.2003 to 29.12.2003. Further, he has taken treatment at K.V.T.Health Centre, Moolakadai, Chennai - 600 060 as inpatient from 29.12.2003 to 08.01.2004, 03.03.2004 to 10.03.2004 and again from 01.09.2006 to 16.10.2006. Therefore, 1st respondent filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him against the 2nd respondent and appellant, being the owner and insurer of the motorcycle respectively.

4.The 2nd respondent - owner of the motorcycle remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and additional counter statement denying all the averments made by the 1st respondent. According to appellant, at the time of accident, the 2nd respondent's motorcycle was not insured with them and the rider of the motorcycle was not possessing valid and effective driving license. The motorcycle belonging to 2nd respondent was insured with the appellant under Act Policy No.010907/31/02/06685 on the date of accident and the said policy does not cover pillion rider. No additional premium was paid to cover the risk of pillion rider. The 1st respondent was travelling as pillion rider in the motorcycle and hence, the appellant is not liable to pay any compensation to the 1st respondent. The appellant denied the age, avocation, income, injuries, disability, period of treatment taken and medical expenses incurred by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, Dr.K.J.Mathiazhagan was examined as P.W.2, Dr.T.S.Kalkura was examined as P.W.3 and 9 documents were marked as Exs.P1 to P9. The appellant examined one K.Subramaniam, Assistant Manager of appellant-Insurance Company as R.W.1 and marked five documents as Exs.R1 to R5.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the rider of the motorcycle belonging to 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.10,04,275/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent-owner of the motorcycle.

8.To set aside the said award dated 23.01.2013 made in M.C.O.P.No.2407 of 2007, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Tribunal erroneously directed the appellant to pay the compensation at the first instance and recover the same from the 2nd respondent-owner of the motorcycle. The Tribunal failed to see that when appellant is not liable to pay any compensation, the order of pay and recovery is erroneous. As per the proposal form submitted by the 2nd respondent, it is clear that policy taken by him is only Act Policy. The extra premium collected was for 'loading' due to break in policy and perception of risk. The Tribunal erroneously interpreted extra premium collected by the appellant to hold that policy issued by the appellant is a comprehensive policy. The Tribunal failed to appreciate the proposal which reveals the intention to avail Act Policy and nothing more and under said policy, no liability can be fastened on the appellant in respect of pillion rider. The learned counsel further contended that a sum of Rs.160/- collected towards 'loading' of third party premium is not for comprehensive policy to cover the pillion rider. The amount was collected over and above the basic premium for adverse claims, experience of vehicle insured and individual risk perception as per the insurer's assessment. The learned counsel appearing for the appellant referred to Clause (B) of India Motor Tariff. In support of his contention, the learned counsel also relied on the following judgments:

(i) Judgment of this Court reported in 2017 SCC Online Mad 12484, [The National Insurance Company Limited, No.751, Anna Salai, Chennai Vs. M.Padmini and others], wherein this Court at paragraph No.6 has held as follows:

> " ... 6. In this context, I find that the submissions of the learned counsel for the respondents/claimants suspecting the genuineness of Ext.R-1 less convincing. It does not stand to reason as to why should an insurance company go personal in this particular case to fabricate a document when it faces claims running to several lakhs every day. And Ext.R-6 proposal form does not support him either. As to the second leg of his argument in equating loading TP with additional premium, it needs to be stated that the expression TP is but an abbreviation for Third Party and the premium on a Third Party insurance is additionally loaded. In this regard General Regulations in GR.3 of IMT is relevant.
>
> "G.R.3 Policy Forms:
> Policies insuring Motor Vehicles are to be issued only as per the Standard Form(s) given in Section 6 of the Indian Motor Tariff.
>
> A. Types of Policies
>
> There are two types of Policies:
>
> i.Liability Only Policy: This covers Third Party Liability for bodily injury and/or death and Property Damage. Personal Accident Cover for Owner-Driver is also included.
>
> ii.Package Policy: This covers loss or damage to the vehicle insured in addition to (i) above.
>
> Restricting the scope of cover under Section-I (loss of or damage to the vehicle insured) of the Package Policy without any reduction in Tariff rates is permitted. Excepting this, no alteration or extension of any of the Covers, Terms, Conditions, Exclusions etc. of any of the

Policies/Endorsements laid down in this tariff is permitted without prior approval of the TAC.

B. Rating:
Rates provided under this Tariff are minimum rates. Loading on tariff premium rates by 100% may be applied for adverse claims experience of the vehicle insured and individual risk perception as per the insurer's assessment. If the experience continues to be adverse, a further loading of 100% on the expiring premium may be applied. No further loading shall apply."

The learned counsel appearing for the appellant further submitted that pillion rider is not a third party in Act Policy. The Insurance Company is not liable to pay compensation for bodily injured or death of pillion rider.

(ii) Judgment of this Court reported in 2019 SCC Online Mad 16849, [United India Insurance Company Limited Vs. Sathish Kumar and another], wherein this Court at paragraph Nos.11 & 12 has held as follows:

" ... 11.The contention of the appellant is that the policy in question is only an Act policy and it covers risk and liability in respect of the third parties only and it does not cover the rider and pillion rider of the Motor bike. The 1st respondent has not disputed that the policy issued by the appellant is only an Act Policy. It is not the case of the 1st respondent that policy issued by the appellant is comprehensive policy covering both rider and pillion rider of the Motor bike. The Tribunal fastened the liability of the appellant on the ground that the 1st respondent was a third party. Such finding is erroneous. It is well settled that in an Act Policy the rider and the pillion rider of the two wheeler are not covered and Insurance Company is not liable to pay compensation for the bodily injuries or the death. Whether, the pillion rider is covered under the Act Policy or not was considered by the Hon'ble Apex Court in the

Judgment reported in 2006 (4) SCC 404 [United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and others], wherein the Hon'ble Apex Court has held that the pillion rider is not covered in the Act Policy and the Insurance Company is not liable to pay compensation to the pillion rider.

12.In the present case, the Insurance Policy in question is only 'Act Policy' and 1st respondent was a pillion rider. In view of principles that emerged in the judgments referred to above, the 1st respondent is not a third party and he is only a gratuitous passenger. The contention of the learned counsel for the 1st respondent that the 1st respondent is a pillion rider and the Tribunal rightly directed the appellant to pay the compensation is without merits. The Tribunal erroneously held that the 1st respondent, pillion rider is a third party and appellant is liable to pay compensation. In the judgment of the Hon'ble Apex Court reported in 2006 (4) SCC 404 extracted above, it has been held that pillion rider is a gratuitous passenger in case of Act Policy. In the judgment of the Hon'ble Apex Court reported in 2007 (5) SCC 428 [Oriental Insurance Co. Ltd., vs. Meena Variyal], the Hon'ble Apex Court referring to Asha Rani's case, [New India Assurance Co. Ltd., Vs. Asha rani], held in paragraph No.18 as follows:

> “In other words, this Court clearly held that the apparently wide words 'any person' are qualified by setting in which they occur and that 'any person' is to be understood as a third party”.

As per the judgments referred to above, in an Act Policy, the pillion rider in a two-wheeler is a gratuitous passenger and appellant is not liable to pay compensation to the 1st respondent. In view of the fact that the appellant is not liable to pay any compensation, the question of pay and recovery does not arise."

And submitted that this Court in the above cited judgments has already decided that loading TP premium is not collected for the risk of occupant of the car. The Tribunal erroneously fixed excessive amount as monthly income of the 1st respondent, applied multiplier method and awarded compensation for earning capacity. The compensation awarded by the Tribunal under loss of income, loss of earning capacity, pain and sufferings and loss of amenities are excessive and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the policy issued by the appellant covers the risk of pillion rider also. The appellant has received a total premium of Rs.320/-, i.e., extra premium of Rs.160/- apart from Rs.160/- for third party risk. R.W.1 has admitted in cross examination that to cover the risk of third party, the premium payable is only Rs.160/-. In the policy, it has been specifically mentioned that seating capacity of two wheeler is 'two'. The Tribunal considering the evidence of R.W.1, terms of policy and other documents filed by the appellant, held that appellant received extra premium and the 1st respondent is entitled to compensation and ordered pay and recovery. The learned counsel further submitted that the 1st respondent sustained fracture of mandible both side, fracture right humerus and fracture of right olecrenon process of ulna and right hand above elbow was amputated. After the accident, the 1st respondent was taken to Government General Hospital, Chennai, The Best Hospital Private Limited, Kodambakkam, Chennai - 600 024, K.V.T.Health Centre, Moolakadai, Chennai - 600 060 as inpatient, totalling 71 days as inpatient in different spells. Amputation above elbow was done. Due to the injuries, disability and amputation, the 1st respondent could not continue his work as Sub Contractor as he was doing earlier. The Tribunal considering the evidence of P.W.2 & P.W.3/Doctors, medical records and nature of injuries, awarded compensation under different heads, which are not excessive and prayed for dismissal of the appeal.

11.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

13.From the materials available on record, it is seen that the 1st respondent has filed claim petition claiming compensation for the injuries sustained by him in the accident that took place on 19.12.2003, while he was travelling as pillion rider in the motorcycle bearing Registration No.TN 04 E 2079 belonging to 2nd respondent and insured with appellant. The 1st respondent let in evidence and proved that accident occurred only due to rash and negligent driving by the rider of the motorcycle belonging to 2nd respondent. But, appellant in the additional counter statement has stated that policy issued by them is only Act Policy and it does not cover the risk of pillion rider. To substantiate this, the appellant examined one K.Subramaniam, Assistant Manager as R.W.1 and marked five documents as Exs.R1 to R5. Ex.R2 is the insurance policy issued by the appellant to the 2nd respondent. In the insurance policy, it has been mentioned that basic premium to cover the third party risk is Rs.160/- and collected Rs.160/- for loading of TP premium. Total liability premium collected was Rs.320/-. The Tribunal considering Ex.R2/insurance policy wherein the seating capacity is mentioned as 'two' and appellant collected additional premium of Rs.160/- over and above the basic premium of Rs.160/-, held that appellant has collected additional premium to cover the risk of pillion rider and Ex.R2/insurance policy issued by the appellant is not an Act Policy. This finding is erroneous as Tribunal failed to see Ex.R3/copy of India Motor Tariff, wherein in clause (B), it has been categorically stated that Insurance Company is entitled to collect additional premium as loading TP premium taking into consideration the adverse claims, experience of the vehicle insured and individual risk perception as per the insurer's assessment. If experience continues to be adverse, a further loading of 100% on the expiring premium may be applied. No further loading shall apply. For easier reference, clause (B) of India Motor Tariff has been extracted hereunder:

INDIA MOTOR TARIFF

B. Rating:

> Rates provided under this Tariff are minimum rates. Loading on tariff premium rates by 100% may be applied for adverse claims experience of the vehicle insured and individual risk perception as per the insurer's assessment. If the experience continues to be adverse, a further loading of 100% on the expiring premium may be applied. No further loading shall apply.

In view of clause (B) of India Motor Tariff, 100% additional premium collected as premium for loading TP premium does not amount to cover the risk of pillion rider. Further, the Tribunal erred in holding that pillion rider is third party and appellant is liable to pay compensation at the first instance and recover the same from the 2nd respondent – owner of the motorcycle. This Court considered similar issue in the case of The National Insurance Company Limited, No.751, Anna Salai, Chennai Vs. M.Padmini and others reported in 2017 SCC Online Mad 12484 and considering clause (B) of India Motor Tariff, held that premium collected for loading is not to cover the risk of passengers travelling in the jeep. The ratio laid down in the said judgment with regard to four wheeler is squarely applicable to the facts of the present case.

14.For the above reason, the award of the Tribunal holding that appellant has collected additional premium to cover the risk of pillion rider and pillion rider is third party is erroneous and order of pay and recovery is liable to be set aside and it is hereby set aside. The appellant is not liable to pay any compensation to the 1st respondent. The 2nd respondent-owner of the motorcycle alone is liable to pay the compensation awarded to the 1st respondent.

15.As far as quantum of compensation is concerned, the Tribunal considering the nature of injuries, disability, period of treatment, age and nature of work done by the 1st respondent, has awarded compensation under different heads, which are not excessive and hence, the same are confirmed.

16.For the above reason, this Civil Miscellaneous Appeal is allowed and a sum of Rs.10,04,275/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The 2nd respondent-owner of the motorcycle is directed to deposit 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.C.O.P.No.2407 of 2007 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai. On such deposit, the 1st respondent is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the award amount lying in the credit of M.C.O.P.No.2407 of 2007, if the award amount has already been deposited by them. If the appellant-Insurance Company has deposited the entire award amount and the 1st respondent has already withdrawn the entire award amount, it is open to the appellant-Insurance Company to recover the same from the 2nd respondent-owner of the motorcycle. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal, III Judge,
Small Causes Court, Chennai.

Copy to:
The Section Officer,
VR Section, High Court,
Madras.

AJS(CO)
CB(07/03/2022)