IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2023

PRONOUNCED ON : 09.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

C.M.A.No.1286 of 2018 and
C.M.P.No.10293 of 2018

National Insurance Company Ltd.,
No.751, TP Hub, 3rd Floor,
Anna Salai, Chennai – 2. ...Appellant

Vs.

1. Ramesh
2. Prasanth ..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decreetal order dated 06.10.2016 passed in M.C.O.P.No.333 of 2013 by the learned Motor Accidents Claims Tribunal (III Additional District Judge), Tiruvallure at Poonamallee.

For Appellant : Mr.D.Bhaskaran

For Respondents : R1–Notice served– No Appearance

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company questioning the liability and challenging the compensation awarded in M.C.O.P.No.333 of 2013 dated 06.10.2016 by the learned Motor Accidents Claims Tribunal (III Additional District Judge), Tiruvallur.

2 The appellant is Insurance Company, first respondent is claimant and the second respondent is owner cum rider of the offending vehicle. The first respondent/claimant filed claim petition in M.C.O.P.No.333 of 2013 claiming Rs.2,00,000/- as compensation stating that on 01.01.2013 when he was traveling as a pillion rider in the two wheeler, for which the second respondent is a owner cum rider and when the vehicle reaches Medavakkam Main Road, Nathanjeri Bus Stand, the rider of the two wheeler driven the vehicle in a rash and negligent manner and caused the accident, in which he sustained grievous injuries.

3 The claim petition was not contested by the second respondent owner cum rider of the offending vehicle and he remained ex-parte before the Tribunal. The claim petition was contested by the appellant/Insurance company and they filed detailed counter denying all the allegations apart from disputing the liability.

4 Before the claims Tribunal, On the side of the first respondent/claimant P.Ws.1 and 2 were examined and Exs.P1 to P5 were marked. On the side of the appellant/Insurance Company, R.W.1 was examined and copy of the policy was marked as Ex.R1.

5 The Tribunal, on an assessment of the entire evidence on record, fixed the liability on the owner of the offending vehicle and awarded a sum of Rs.1,25,000/- as compensation along with 7.5% interest and directed the appellant/Insurance Company to pay the award amount and since it is an Act Policy, which does not cover the pillion rider, ordered pay and recovery from the second respondent/owner of the vehicle. Not being satisfied with the compensation ordered by the Tribunal and aggrieved in directing the appellant/Insurance Company to pay the award amount, the Insurance Company has filed the present appeal.

6 Learned counsel appearing for the appellant/Insurance Company would submit that the Insurance Company of the Auto, which involved in the accident has not been impleaded as party in the claim petition. Further even otherwise, the Policy of the offending vehicle is only an Act Policy, which does not cover the pillion rider. According to the claimant, at the time of accident, he was traveling as a pillion rider. Further no additional premium was paid for the pillion rider. The Tribunal has failed to consider all the above facts and erroneously fixed the liability on the appellant/Insurance Company. The liability can be determined only based on the premium collected and there is no additional premium paid for the pillion rider of the offending vehicle. Hence in the absence of any additional premium, the appellant/Insurance Company is not liable to pay the award amount. To support his contention, the learned counsel relied on the judgment of this Court reported in 2012 (2) TN MAC 566, in which it is held that 'Act Policy' though covers third party liability does not cover risk in respect of occupant and even doctrine of pay & recovery not applicable.

Therefore, the first respondent/claimant, who claimed as pillion rider, is only a gratitude passenger, who does not cover under the 'Act Policy' and hence the policy did not cover the risk of death of or bodily injury to the first respondent/claimant.

7 Even though notice served on the first respondent/claimant, none appeared on behalf of the claimant.

8 Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

9 Even though, the appellant/Insurance Company disputed the manner of the accident, in order to prove the same the claimant, who is the eye witness to the occurrence was examined as P.W.1 and he categorically stated that the rider of the two wheeler only driven the vehicle in a rash and negligent manner and caused the accident. Further the appellant/Insurance Company has neither summoned driver of the Auto involved in the accident nor the owner cum rider of the offending vehicle to prove the manner of the accident. In the absence of the same, there is no reason to disbelieve the evidence of P.W.1. The claimant is none other than the pillion rider of the offending vehicle and he is an eye witness to the occurrence and there is no contra evidence. Under these circumstances, this Court finds that the accident had occurred due to rash and negligent driving of rider of the two wheeler, in which the claimant was pillion rider and since the offending vehicle is insured with the appellant, the appellant/Insurance Company is liable to pay the compensation.

10 It is the main contention of the learned counsel for the appellant/Insurance Company that the policy is only 'Act Policy', which does not cover other than the owner cum rider of the vehicle insured and admittedly the claimant was pillion rider and hence the appellant is not liable to pay the compensation. Further contention is that there is no additional premium paid by the owner cum rider of the offending vehicle.

11 Admittedly, at the time of accident, the claimant was traveling as a pillion rider in the offending vehicle, which was insured with the appellant. In the counter affidavit filed in the claim petition before the Tribunal, the appellant did not take a stand that the policy is only 'Act

Policy' and the same does not cover the claimant and only at the time of evidence, they summoned one of the staff of the appellant's office and stated that it is only 'Act Policy' and there is no additional premium. Therefore the Tribunal rightly held that even though it is 'Act Policy' the claimant is a pillion rider and there is no evidence to show that at the time of taking policy the owner of the two wheeler was explained about the schemes and was asked to pay additional premium, despite, the owner of the two wheeler refused to pay. Therefore the appellant/Insurance Company can always claim additional premium even subsequent to the policy.

12 Further a two wheeler is only meant for two persons and naturally when two persons traveling, it can cover the pillion rider also. In this case, it is not the case of the appellant/Insurance Company that the owner of the vehicle was not riding the two wheeler and the claimant, who is a third party, drove the vehicle and he is a tort feasor and the Insurance Company is not liable to pay the amount. It is an admitted fact that the owner of the vehicle only was riding the two wheeler and the claimant was pillion rider.

13 Under these circumstances, the Insurance Company is liable to pay the compensation for the loss caused by the owner of the offending vehicle, which was insured with the appellant and the Tribunal rightly ordered pay and recovery, in which this Court does not find any reason to interfere with.

14 As far as quantum of compensation, there is no dispute on the same and considering the nature of injuries and the period of treatment, this Court also does not find any reason to modify the compensation awarded by the Tribunal, which is just fair and reasonable and hence the same is hereby confirmed. The appellant is directed to deposit the award amount within a period of six weeks from the date of receipt of a copy of this order and on receipt of the same, the Tribunal is directed to pay the same directly to the account of the first respondent/claimant as per the decision of the Division Bench of this Court reported in *2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur, Vs. Rajesh and Others).*

15 With the above directions, this civil miscellaneous appeal is dismissed. Connected miscellaneous petitions is also closed. No costs.

09.11.2023

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Speaking Order: Yes/No
Neutral citation: Yes/No

To

1. The Motor Accidents Claims Tribunal
   (III Additional District Judge), Tiruvallure at Poonamallee.

2. The Section Officer, V.R.Section, High Court, Madras.

P.VELMURUGAN. J.,

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Pre-Delivery Judgment in

C.M.A.No.1286 of 2018 and
C.M.P.No.10293 of 2018

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