THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2092 of 2018
and
C.M.P.No.16228 of 2018

The United India Insurance Co. Ltd.,
No.5/B-11, State Bank Upstair,
Salem Road, Rasipuram Taluk,
Namakkal District. ... Appellant / II Respondent

Vs.

1.Jaffer Siddiq ... I Respondent / Petitioner

2.Palanivel ... II Respondent / I Respondent

Prayer : Civil Miscellaneous Appeal filed 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.02.2018 made in M.C.O.P.No.402 of 2015 on the file of the Motor Accident Claims Tribunal at Rasipuram.

For Appellant : Ms.I.Malar
For Respondents : No appearance

*****

JUDGEMENT

The appeal is filed by the Insurance Company being aggrieved by the liability fixed on the Insurance Company to pay the compensation of Rs.1,43,533/- for injuries sustained by the claimant in the road accident.

2. As per the claim petition, on 16.10.2015, the petitioner was travelled as a pillion rider in a two wheeler bearing Reg.No.TN-28-AZ-7756, which was owned by his friend namely Jeyakumar, proceeded from Rasipuram to Tiruchengode Main Road. On the same day, at about 12.00 hour, near Vandipettai Gurusamy Palayam, all of sudden, a dog which was crossed the road, the rider of the two wheeler hit the dog, due to which, the petitioner sustained multiple grievous injuries all over his body. Thereafter, the petitioner had filed a claim petition claiming a total compensation of a sum of Rs.5,00,000/- under various heads.

3. Before the Tribunal, the petitioner had examined himself as P.W.1 and examined the doctor as P.W.2 and marked 11 documents viz., Ex.P.1 to Ex.P.11. On the side of the respondents, they examined one

witness viz., R.W.1 and marked 2 documents viz., Ex.R.1 and Ex.R.2.

4. Before the Tribunal, the petitioner submitted that he was a student of KSR College studying BCA. Due to impact of the accident, he is not able to do his work well as before he did. He further submitted that the rider of the two-wheeler driven his vehicle in a rash and negligent manner and in view of the sudden intervention of a dog crossing the road, the rider of the two-wheeler lost his control and due to which, the petitioner fell down and sustained grievous injuries. He also submitted that FIR was marked as Ex.P.1 and crime report was marked as Ex.P.4 which reveals that the accident had happened due to the negligence on the part of the rider of the vehicle. Hence, the petitioner is entitled for compensation.

5. On behalf of the insurance company, it was submitted that the rider of the vehicle possessed a 'liability only policy' and hence, the insurance company is not liable to pay any compensation to the petitioner. Further, he submitted that since the vehicle belongs to the rider of the vehicle and the petitioner was a pillion rider, as per regulations of

the policy, the petitioner was not entitled to claim any compensation at the hands of the insurance company.

6. After hearing both sides, the Tribunal finds that the petitioner was entitled to compensation for a sum of Rs.1,43,533/- and applying the ratio laid down in the judgment reported in ***2011 (2) TN MAC 625*** held that the insurance company is liable to pay compensation and thereafter, recover the same from the insured/owner of the vehicle. Challenging the same, the present appeal is filed by the appellant/insurance company.

7. The learned counsel appearing for the appellant submitted that the Tribunal is erred in directing the insurance company to pay the compensation to the claimant. In this regard, he relies on a judgment in the case of ***United India Insurance Co. Ltd. Vs. Tilak Singh & Ors.*** reported in ***2006 (4) SCC 404***, wherein it was held that the liability policy did not cover the liability towards pillion rider. Hence, the award of the Tribunal may be set aside.

8. Heard the learned counsel appearing for the appellant/insurance

company and also perused the materials available on record.

9. It is an admitted case that on 16.10.2015, the claimant sustained injuries while travelling as a pillion rider in the vehicle, which was owned by the second respondent. It is also an admitted fact that the vehicle was owned by the second respondent and he possessed liability only policy. Further, the rider of the vehicle was not examined as a witness to substantiate or buttress the evidence of the claimant. In this regard, the reliance placed by the learned counsel appearing for the appellant on the case of the *United India Insurance Co. Ltd. Vs. Tilak Singh (supra)* is apposite. In the above judgment, the facts was one Rajinder Singh who was riding as a pillion rider on 31.10.1989 while the scooter was being driven by the respondent no.1, died as a result of an accident. The legal heirs of the deceased moved an application seeking compensation, which was opposed by the ground that the insurance policy did not cover the liability towards the pillion rider. The Tribunal held that the driver of the vehicle was liable to pay compensation. Aggrieved by the same, the driver of the vehicle approached the High Court, which held in favour of the respondent no.1, thereby directed the insurance company to pay the

compensation. Being aggrieved, the insurance company approached the Hon'ble Supreme Court on the ground that the law applicable in determining the liability of the insurance company would be the 1939 Act and not 1988 Act and since the deceased was a pillion rider, the risk of death or disability of pillion rider was not covered under the policy. After applying the ratio of the decision of the case of ***New India Assurance Company Vs. Asha Rani & Ors.***, the Hon'ble Supreme Court held that the appellant/insurance company has no liability towards the injuries suffered by the deceased Rajinder Singh, who was a pillion rider as the insurance policy was a statutory policy and did not cover the risk of death or bodily injury to gratuitous passenger.

10. Hence, applying the ratio laid down by the Apex Court in the case of *United India Insurance Co. Ltd. vs. Tilak Singh & Ors.*, this Civil Miscellaneous Appeal stands allowed and the award of the Tribunal in M.C.O.P.No.402 of 2015 dated 12.02.2018 is set aside. If any amount deposited by the appellant/insurance company, the appellant/insurance company is permitted to withdraw the same by filing appropriate application before the Tribunal. No costs. Consequently, the connected

miscellaneous petition is closed.

01.11.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

1.The Motor Accident Claims Tribunal at Rasipuram.
2.The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.,

sp

C.M.A.No.2092 of 2018

01.11.2023