IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2023

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THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.881 of 2018

R.Senthamizh Mari ... Appellant

Vs.

1. G.Nagalingam

2. United India Insurance Company Limited,
Branch 1st Floor,
No.235, New Millitary Road,
Avadi, Chennai.

3. The Chairman,
Insurance Regulatory and
Development Authority of India (IRDAI),
SY.No.115/1, Financial District,
Nanakramguda,
Gochibowli,
Hyderabad – 500 032.

4. Union of India,
Represented by its Secretary,
Ministry of Surface Transport,
New Delhi.

5. Union of India,
Represented by its Secretary,
Finance Department,
New Delhi.

[R3 to R5 suo motu impleaded as respondents vide court order dated 16.04.2018 made in C.M.A.No.881 of 2018.]

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988 against the judgment and decree dated 01.08.2017 and made in M.A.C.T.O.P.No.396 of 2016 on the file of the Motor Accident Claims Tribunal and (II Additional District Judge, Poonamallee).

For Appellant	: M/s.M.Malar
For R1	: No appearance
For R2	: Mr.J.Michael Visuvasam
For R3	: Mr.N.Vijaya Raghavan
For R4 & R5	: M/s.C.Kulanthaivel, SPC

JUDGEMENT

Claimant is the appellant who filed the claim petition in M.A.C.T.O.P.No.396 of 2016 on the file of the Motor Accident Claims Tribunal and (II Additional District Judge, Poonamallee).

2. The Tribunal, after considering the materials, awarded a sum of Rs.14,84,660/- as compensation. Challenging the same, the claimants have filed the present appeal before this Court.

3. Learned counsel for the appellant submitted that deceased is the only son of the claimant. The claimant is the mother of the deceased. He died in the road accident that occurred on 23.04.2016. The accident had occurred due to rash and negligent driving of the rider of the motor cycle bearing Registration No.TN 20 M 9561. Son of the claimant was the pillion rider of the said vehicle. Due to accident, both the rider and pillion rider died on the spot. At the time of accident, the said vehicle was insured with the second respondent/Insurance Company. The first

respondent was the owner of the vehicle. The deceased is the only bread winner of the family. At the time of accident, the deceased was 23 years. He was working as sales and service engineer. He was earning Rs.15,000/- per month. The Tribunal has fixed the income of the deceased at Rs.10,000/- per month. 1/3rd of the income of the deceased was deducted for personal expenses. Since the deceased was a pillion rider and he was a third party, the insurance company is liable to pay compensation. Unfortunately, the Tribunal failed to consider the principles of law and the decisions of the Hon'ble Supreme Court of India and this Court and held that the policy is only an “Act” policy and it covers only the driver and owner. Hence, exoneration of Insurance Company is against the principles of law. Quantum fixed by the Tribunal does not reflect the just compensation.

4. The learned counsel for the second respondent/Insurance company submitted that the policy is “Act” Policy. It covers only the owner and rider alone. No premium was paid for the pillion rider. At the time of accident, the pillion rider was a third party. He was travelling in

the insured vehicle. Since the policy is not covered for the pillion rider, the Tribunal rightly ordered compensation. Hence, the owner is liable to pay the compensation. There is no merit in the appeal and the same is liable to be dismissed.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. Admittedly, the son of the claimant and yet another person were travelling in the first respondent's vehicle bearing Registration No.TN 20 M 9561 and they met with an accident, due to which, he died. P.W.1 who is the eye witness, has clearly stated that accident had occurred only due to rash and negligent riding of the rider of the motor cycle. The Insurance policy is an “Act” Policy and no premium has been paid for the person other than owner cum driver. In this case, the accident had occurred only due to rash and negligent riding of the rider of the motor cycle. Hence, the owner is liable to pay the compensation. The Tribunal held that owner is liable to pay compensation. Claimant is the mother of

the deceased. Considering his age and income, proper multiplier method has been adopted by the Tribunal. The Tribunal has rightly fixed the income of the deceased at Rs.10,000/-. After deducting 1/3rd of the amount for personal expenses and after adopting multiplier 17, the loss of income has been derived as Rs.13,59,660/-.

7. There is no policy covered for the pillion rider. It is a contractual liability. Insurance Company has been rightly exonerated. The Tribunal ordered liability on the part of the owner of the vehicle. There is no merit in the appeal and the same is liable to be dismissed. Accordingly Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.07.2023

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Index:Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No

To

1. The Motor Accident Claims Tribunal,
   II Additional District Judge,
   Poonamallee.

2. The Section Officer,
   VR Section,
   High Court,
   Madras.

P.VELMURUGAN, J.

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C.M.A.No.881 of 2018

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