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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2023

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.592 of 2014

United India Insurance Co. Ltd.,
Rep. By Divisional Office,
Palakad.

... Appellant

Vs.

1. Sajith Mathew
2. S.Ashish
3. M.K.Krishnan
4. M.Sadik Ali

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 01.03.2013 made in MCOP.No.1029/2012 on the file of the Motor Accident claims Tribunal (Special Sub court) Coimbatore.

For Appellant : Mrs.I.Malar
For Respondents : No appearance - RR1,2 & 4
R3 - NDW

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 01.03.2013 made in MCOP.No.1029/2012 on the file of the Motor Accident claims Tribunal (Special Sub court)



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2. It is the case of the claimant that on 06.02.2010 at about 23.30 hours, when the claimant was travelling as a pillion rider in a motor cycle bearing Reg. No.KBF 9749 driven by the second respondent in a rash and negligent manner and hit against electric post, thereby, the claimant and the first respondent fell down from the motor cycle and sustained injuries. The Policy is in the name of the third respondent and the 4th respondent is the present owner of the vehicle and the appellant is the insurer of the vehicle. Hence, the first respondent herein, has filed a Claim Petition before the Motor Accident Claims Tribunal, claiming Rs.15,00,000/- as compensation under various heads.

3. During the trial before the Tribunal, on the side of the claimant, the first respondent himself examined as PW1 and marked 9 documents viz., Exs.P1 to P9. On the side of the insurance company, one witness was examined and no document was marked.

4. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.2,19,200/- as compensation to the claimant payable by the appellant



herein. Questioning the quantum of compensation, the appellant insurance company has filed this appeal before this Court.

5. The learned counsel for the appellant submitted that admittedly, the first respondent claimant was travelling as pillion rider and the second respondent was riding the motor cycle at the time of the accident and the third respondent is the owner of the two wheeler at the time of the accident. At present, the 4th respondent is the owner of the two wheeler.

6. The learned counsel for the appellant Insurance company further contended that the third and fourth respondents are having Act policy and the injured claimant is a pillion rider of the motor cycle, insured with the appellant insurance company and since, the injured was travelling only as a pillion rider and the policy was only an Act policy, the appellant Insurance Company is not liable to pay any amount as compensation to the pillion rider, since it was not insured. Further, he contended that the Tribunal, without considering the question on that aspect, has erroneously come to the conclusion that the Insurance company shall pay compensation amount and hence, the award passed



by the Tribunal is liable to be set aside.

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In support of his contention, he relied upon the following judgments:-

1.2006(1)TNMAC 36 SC [United India Insurance Co. Ltd., Shimla vs. Tilak Singh and others].

2.2009(1)TN MAC 1 (FB) [Branch Manager, United India Insurance Co. Ltd., Branch Office Nethaji Bye Pass Road, Dharmapuri Town vs. Nagammal and others .

3.2013 ACJ 321 [Oriental Insurance Co. Ltd vs. Surendra Nath Loomba and others]

4.2009 ACJ 104 [General Manager, United India Insurance Co. Ltd vs. M.Laxmi].

5.2008(2) TN MAC 16 (SC) [Oriental Insurance Co Limited vs. Sudhamaran K.V. & Ors.]; and 6.2013(1) TN MAC 631 (DB) [New India Assurance Co. Ltd., rep. by its Branch Manager, Branch Office, Thane vs. L.Agnes and others]

7. Heard the learned counsel for the appellant and perused the materials available on record. Though notice has been sent on the respondents, they have not claimed. Considering the pendency of the appeal, this Court is inclined to dispose the same based on the available records.

8. The facts of the case are not in dispute. Admittedly, the

<https://www.mhc.tn.gov.in/judis> deceased was travelling in the motorcycle as pillion rider and he was not



a owner of the vehicle. It is relevant to state that except the Insured, all other would become third parties. However, merely because, the claim relates to the death of or bodily injury to a Third party and the vehicle had valid Insurance cover as on the date of the accident, the Insurer cannot be made liable for the award. Before making the Insurer liable for the award, the question that requires to be examined is as to whether the risk in question is compulsorily required to be covered under the Act or is factually covered under the Insurance Policy. If the risk is covered either under the Act or under the Policy, the Insurer will be made liable.

9. At the time of accident, the injured was travelling as a pillion rider and as per the Registration Certificate of the motor cycle, two persons can travel and hence, there is no prohibition for travelling as a pillion rider in the motor cycle, apart from the rider and therefore, the injured cannot be termed as a gratuitous passenger, nor fare paying passenger and the injured is coming under the category of 'third party' and therefore, there is no need to pay additional premium to cover the risk or death of persons in the motorcycle and the Insurance company ought to have satisfied the entire award amount to the injured. He further contended that even though, the respondents 3 & 4 is having Act policy,



the Tribunal, after analyzing the materials available on record and also the rulings cited on either side, has rightly awarded the quantum of compensation and hence, there is no need to interfere with the same and therefore, the appeal has to be dismissed.

10. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed. No costs.

29.11.2023

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Index : yes/no
Internet : yes/no
Speaking Order/Non-Speaking Order

To

The Motor Accident claims Tribunal
(Special Sub court) Coimbatore.



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M.DHANDAPANI.J.,

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