



WEB COPY



C.M.A.No.996 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.996 of 2022 and
C.M.P.No.7377 of 2022

The Divisional Manager,
United India Insurance Co Ltd.,
Cuddalore.

....Appellant

Vs.

1.Ragul Gandhi

2.Ravi

...Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the decree and Judgment dated 03.07.2019 made in M.C.O.P.No.136 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Chidambaram.



C.M.A.No.996 of 2022

For Appellants : M/s.M.J. Vijayaraaghavan

For Respondents : R1- Mr. A. Murugan

R2 - No Appearance

J U D G M E N T

The Insurance Company has preferred the instant appeal challenging the findings with regard to negligence and quantum of compensation awarded by the Tribunal.

2. The first respondent filed a claim petition stating that on 15.03.2013 at about 7.45 P.M, while he was travelling as a pillion rider in a two wheeler bearing Registration No.TN 04 W 6887, the rider of the two wheeler drove the same in a rash and negligent manner, hit a speed breaker as a result of which he fell down and sustained grievous injuries.

3. The 2nd respondent remained ex-parte before the Tribunal.

4. The appellant/Insurance Company filed a counter denying the averments made in the claim petition and stated that the accident occurred due



C.M.A.No.996 of 2022

to the rider of the two wheeler therefore, they were not liable to pay compensation; and that in any event, the compensation claimed was excessive and prayed for dismissal of the claim petition.

5. The first respondent herein examined himself as P.W.1 and marked nineteen documents as Exs.P1 to P19. The appellant examined R.W.1 and marked two documents as Exs.R1 and R2. The Disability certificates issued by the Hospital were marked as Exs.X1 and X2.

6. The Tribunal after taking into consideration the evidence on record held that the accident occurred due to rash and negligent driving by the rider of the two wheeler and fixed 10% contributory negligence on the part of the first respondent since three persons travelled in the motorcycle violating the policy conditions and awarded a sum of Rs.3,25,665/- being 90% compensation to the first respondent.



C.M.A.No.996 of 2022

7. Learned counsel for the appellant submitted that the policy was an act policy and the pillion rider was not covered; that however the Tribunal had not considered the nature of the policy and merely observed that since there is a policy, the appellant is liable to compensate; that the Tribunal had also ignored the evidence of R.W.1/Manager of the appellant company who had stated that the policy was only an act policy and was insured only for third party liability. He further relied upon the Judgments of the Hon'ble Supreme Court and this Court in ***Oriental Insurance Co.Ltd., Vs. Sudhakaran K.V. & Others*** reported in ***2008 (2) TN MAC 16 (SC) and National Insurance Company Vs. Munusamy*** reported in ***2021 (1) TN MAC 644*** in support of his submission.

8. Learned counsel for the first respondent/claimant per contra, submitted that the appellant had not taken a specific stand in the counter stating that the policy was only a liability policy; that the Tribunal had not framed any issue with regard to the liability of the appellant to pay compensation in terms of the policy therefore, the appellant cannot raise this issue for the first time in the appeal and thus, prayed for dismissal of the appeal.



C.M.A.No.996 of 2022

9. The second respondent remained *exparte* before the Tribunal.

Though the private notice sent to the second respondent was served on 11.08.2021 none has entered appearance on his behalf.

10. Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record.

11. It is seen from the evidence on record that R.W.1/Manager of the Appellant had deposed that it was a liability only policy and marked Ex.R1/Insurance Policy. The Tribunal ought to have verified the nature of the policy before awarding compensation. Therefore, even assuming that the appellant had not taken a specific stand in the counter, in the light of the evidence let in by the appellant in the form of Ex.R.1 marked through R.W.1, this Court is of the view that the Tribunal ought to have verified the terms of the policy. Ex.R1 states that it is a liability only policy. It is needless to say that no premium was paid towards coverage under any other heads. In the Judgment of the Hon'ble Supreme Court in ***Oriental Insurance***



C.M.A.No.996 of 2022

Co.Ltd. Vs. Sudhakaran K.V and others reported in **2008 (2) TN MAC 16**

(SC) it had been held that a pillion rider is not entitled to compensation unless the premium has been paid for covering the risk of the pillion rider, where the tortfeasor is the rider of the two wheeler. The relevant paragraph is extracted hereunder for better understanding:-

"19. The law which emerges from the said decisions, is: (i) the liability of the Insurance Company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of the vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of the another vehicle".

This Court in ***Oriental Insurance Co. Ltd Vs. N.Saraswathi*** (cited supra) had reiterated the above settled principle of law.



C.M.A.No.996 of 2022

WEB COPY

12. Admittedly in the instant case, the rider of the two wheeler in which the first respondent travelled as a pillion rider, is the tortfeasor. Therefore, the appellant is not bound to compensate as there is no coverage under the policy issued to the owner of the two wheeler. Therefore, this Court is of the view that the award of the Tribunal is liable to be set aside and it is accordingly set aside. However, the first respondent is entitled to compensation from the owner of the vehicle and can recover the compensation from him in the manner known to law.

13. In the result, the Civil Miscellaneous Appeal is allowed setting aside the award passed by the Tribunal. No Costs. Consequently the connected miscellaneous petition is closed.

29.08.2023

dk

Index: Yes/No

Neutral Citation: Yes / No



C.M.A.No.996 of 2022

WEB COPY

To

1. The II Additional District and Session Court,
Chidambaram.
2. The Section Officer,
VR Section,
High Court,
Madras.



WEB COPY



C.M.A.No.996 of 2022

SUNDER MOHAN, J

dk

C.M.A.No.996 of 2022 and
C.M.P.No.7377 of 2022

29.08.2023