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C.M.A.Nos.3527 and 4738 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.3527 and 4738 of 2019

And

C.M.P.No.20620 of 2019

M/s.The IFFCO-TOKIO General
Insurance Company Limited,
'JH Towers', II Floor,
New No.24, (Old No.302),
L.I.C. Colony Road,
Salem – 636 004.

... Appellant in C.M.A.3527/2019

Tamilselvi

... Appellant in C.M.A.4738/2019

Vs.

1.Tamilselvi
2.Tamilselvi
3.Seeni

... Respondents in C.M.A.3527/2019

1.Tamilselvi

2.The Iffco-Tokio General Insurance Company Ltd.,
JH Towers, II Floor, New No.24, Old No.302,
L.I.C. Colony Road,
Salem – 636 004.
Divisional Office at Selvanayaki Complex,
Perundurai Road, 1st Floor,
Erode – 638 011.

3.Seeni

... Respondents in C.M.A.4738/2019



C.M.A.Nos.3527 and 4738 of 2019

Prayer in C.M.A.No.3527 of 2019:

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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 18.07.2019 passed in M.C.O.P.No.238 of 2016 by the Hon'ble Motor Accidents Claims Tribunal, (In the Court of Special Subordinate Judge), at Erode.

Prayer in C.M.A.No.4738 of 2019:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award in the judgment and decree dated 18.07.2019 made in M.A.C.T.O.P.No.238 of 2016 on the file of the Motor Vehicle Accident Claims Tribunal/ Special Subordinate Judge Court, Erode.

For Appellants : Mr.J.Michael Visuvasam
in C.M.A.No.3527 of 2019

Mr.T.S.Arthanareeswaran
in C.M.A.No.4738 of 2019

For Respondents : Mr.T.S.Arthanareeswaran for R1 and R2
R3 – No Appearance
in C.M.A.No.3527 of 2019

Mr.J.Michael Visuvasam
in C.M.A.No.4738 of 2019

COMMON JUDGMENT

These civil miscellaneous appeals have been filed against the judgment and decree dated 18.07.2019 in M.C.O.P.No.238 of 2016 on



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the file of the Motor Accident Claims Tribunal / Special Subordinate Judge Court, Erode.

2.The petitioner before the Motor Accident Claims Tribunal is the appellant in C.M.A.No.4738 of 2019 (hereinafter referred to as 'claimant'). The second respondent before the Motor Accident Claims Tribunal is the appellant in C.M.A.No.3527 of 2019 (hereinafter referred to as 'Insurance Company').

3.The learned counsel appearing for the claimant submitted that on 12.04.2016 at about 11.30 hours, the claimant travelled as pillion rider in her Honda Activa bearing Registration No.TN-52 B-1033 insured with the Insurance Company from Khozhikkalnatham – Morepalayam near Muthugounder vacant land. At that time since sheep crossed the road, her husband/ third respondent inorder to avoid the accident applied sudden brake, due to which the claimant/ owner cum pillion rider fell down and sustained injuries and thereafter, she filed claim petition claiming compensation of Rs.10 Lakhs. However, the Tribunal after adjudication, awarded only a sum of Rs.2,97,000/- as compensation to the claimant. Hence, the claimant filed C.M.A.No.4738 of 2019 seeking enhancement of compensation.



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4.The learned counsel appearing for the Insurance Company submitted that the claimant is the owner of the motorcycle and her husband is the rider of the vehicle. Due to the fault of her husband, the accident happened and the claimant sustained injuries and her husband does not possess valid licence and further submitted that the claimant is not a third party and she is the pillion rider in the said vehicle and hence, she is not entitled to claim any compensation as against the Insurance Company. Hence, the Insurance Company has filed C.M.A.No.3527 of 2019 seeking to set aside the award.

5.Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the claimant and perused the materials available on record.

6.The fact in the present case is not in dispute. Admittedly, the third respondent is the husband of the claimant and he drove the motorcycle and applied sudden brake, due to which the accident happened. In the present case, the pillion rider is not the third party. The claimant is the pillion rider and owner of the vehicle. Hence, filing claim petition under Section 166 of the Motor Vehicles Act is not sustainable.



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7.The very same issue was considered by this Court in the decision reported in **2021 ACJ 979 [Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu]**, wherein, this Court held that personal accident cover for owner cum driver is contractual in nature and in the absence of any statutory liability of Insurance Company, provisions of Motor Vehicles Act cannot be invoked. Further Section IV – Personal Accident Cover for owner – driver makes it clear that for loss of two limbs or sight of two eyes or one limb and sight of one eye – 100 per cent of CSI, for loss of one limb or sight of one eye – 50 per cent of CSI, however, in the present case, it is only fracture, in which, the claimant is not entitled to claim compensation.

8.Following the ratio laid down in the decision of this Court reported in **2021 ACJ 979 [Cholamandalam MS General Insurance Company Limited Vs. Ramesh Babu]**, the appeal filed by the Insurance Company in C.M.A.No.3527 of 2019 is allowed and the appeal filed by the claimant in C.M.A.No.4738 of 2019 is dismissed. The decree and judgment dated 18.07.2019 passed in M.C.O.P.No.238 of 2016 by the Motor Accidents Claims Tribunal/ Special Subordinate



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M.DHANDAPANI,J.
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Judge Court, Erode, is set aside. The Insurance Company is permitted to withdraw the entire amount already deposited by them.

9.C.M.A.No.3527 of 2019 is allowed and C.M.A.No.4738 of 2019 is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

16.11.2023

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal/
Special Subordinate Judge Court, Erode.

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And
C.M.P.No.20620 of 2019

16.11.2023