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C.M.A.No.2105 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2105 of 2017

and

C.M.P.No.11177 of 2017

United India Insurance Co. Ltd.,
Dr.Nanajappa Road,
Coimbatore.

... Appellant

Vs.

1. M.Rja
2. M.Nagarajan
3. M.Hakkim
4. The Oriental Insurance Co. Ltd.,
72, Dr.Balasundaram Road,
May Flower Building, II Floor,
Coimbatore – 18.
5. Sivaraman
6. J.Jaison

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and decree passed in M.C.O.P.No.1498 of 2012 on 06.10.2016 on the file of the Learned Motor Accident Claims Tribunal (Special Subordinate Judge) Court, at Coimbatore District.

For Appellant : Mr.J.Chandran



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For Respondent : Mr.K.Vinod for R4
No Appearance [R1 &
R5]
Not Ready in Notice
R2, 3 & 6

JUDGEMENT

The Civil Miscellaneous Appeal filed against the Judgment and decree passed in M.C.O.P.No.1498 of 2012 on 06.10.2016 on the file of the Learned Motor Accident Claims Tribunal (Special Subordinate Judge) Court, at Coimbatore District.

2. It is the case of the claimant that on 28.01.2012 when the petitioner was travelling as a pillion rider in a motor cycle bearing registration No.TN 38 E 4852 driven by the fourth respondent, at that time a Mahendra Scorpio bearing Registration No.TN 30 AA 5107 which came in the opposite direction in a rash and negligent manner dashed against the petitioner, due to which the petitioner sustained head injury and died. Claiming compensation in a sum of Rs.5,00,000/-, the petitioner has filed the claim petition.



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3. Before the Tribunal, the claimant examined two witnesses viz., P.W.1 and P.W.2 and marked Exs.P.1 to Ex.P.10 and the respondents examined R.W.1 and R.W.2 and marked Exs.R1 to R.3. However, the Tribunal has awarded a sum of Rs.78,000/- to be payable by the sixth respondent / insurer of the motor cycle in favour of the claimant and thereafter to recover the same from the owner of the motor cycle which is put in issue by the sixth respondent / insurer of the motor cycle in the present appeal.

4. The learned counsel for appellant / insurer of the motor cycle submits that when the first respondent was travelling as a pillion rider along with the respondents 5 and 6, at that time a car which came in the opposite direction dashed against the vehicle driven by the fifth respondent, thereby the pillion riders along with the rider of the Motor cycle sustained head injury. He further submits that the motor cycle driven by the fifth respondent which was insured with the appellant insurance company is covered under an Act Only policy, therefore, the pillion rider is not covered under the said policy. Hence, the appellant / insurer of the motor cycle is not liable to pay the compensation in favour



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of the claimant, who is a pillion rider herein. He further submits that though the seating capacity of the motor cycle is only two in number, however, the driver of the motor cycle has driven the said vehicle along with two pillion riders, in which one of the pillion rider has filed the claim petition seeking compensation in a sum of Rs.5,00,000/- which is in violation of the policy conditions.

5. The learned counsel for the fourth respondent / insurer of the car submits that though as per Ex.P.1, F.I.R. has been registered as against the rider of the motor cycle / fifth respondent and though the Tribunal has fastened entire negligence on the driver of the motor cycle / fifth respondent, however, the Tribunal without considering the said facts in the interest of justice has fastened only 50% liability as against the rider of the motor cycle and directed the insurer of the motor cycle to pay a sum of Rs.78,000/- in favour of the claimant / pillion rider and thereafter to recover the same from the owner of the motor cycle which is *per se* unsustainable.

6. Heard the learned counsel appearing for the appellant and the



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learned counsel appearing for the fourth respondent and perused the materials placed on record.

7. Though the name of the respondents 1 and 5 are printed in the cause list and the notices were served on them, however, no one appeared on their behalf. Considering the period of pendency of the appeal, the same is disposed of based on the materials available on record.

8. Admittedly the rider of the two wheeler has driven the two wheeler along with two pillion riders i.e., first and fifth respondents and caused the said accident. However, one of the pillion riders has filed a claim petitioner before the Tribunal for which the Tribunal has fixed 50% liability as against the insurer of the motor cycle and remaining 50% liability as against the owner of the vehicle. Moreso, the claims Tribunal itself has arrived at a conclusion that the motor cycle driven by the fifth respondent is covered under the Act Only Policy, who carried more than one person which is in violation of the policy conditions. It is the major contention of the appellant / insurer of the motor cycle that the appellant is not entitled to pay the compensation, as the entire negligence is on the



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part of the fifth respondent / driver of the motor cycle. Though the facts stand as such, however, the claimant / first respondent being a pillion rider is not entitled to claim compensation as against the appellant / insurer of the motor cycle, even then, in the interest of justice the Tribunal has directed the appellant / insurer of the motor cycle to pay a sum of Rs.78,000/- in favour of the first respondent and thereafter recover the same from the owner of the motor cycle which is wholly unsustainable.

9. Accordingly, the award passed by the Tribunal is set aside and this appeal is allowed with above terms. However, liberty is granted to the claimant / first respondent to recover the amount from the owner of the motor cycle / sixth respondent in the manner known to law. The appellant is entitled to withdraw the amount if any deposited by them before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No



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- 1.Motor Accident Claims Tribunal (Special Subordinate Judge) Court, at Coimbatore District.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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