BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.03.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.284 of 2014
and
M.P(MD)No.1 of 2014

The Branch Manager,
United India Assurance Co.Ltd., Micro Office,
Robin Complex 2nd Floor, Nagarkoil Road,
Thinkal Santhai,
Kanyakumari District. ... Appellant/5th Respondent

Vs.

1.Seethalakshmi

2.Minor.Karthika

3.Minor.Sridhar

4.Pandian

5.Kasthuri ... Respondents/Petitioners

6.V.Muthupandi ... Respondent/1st Respondent

7.A.Muthu Kalai ... Respondent/2nd Respondent

8.The National Insurance Company Limited,
No.706, Thenkasi Road,
Rajapalayam,
Virudhunagar District. ... Respondent/3rd Respondent

9.Y.Sivan Pillai ... Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree of the learned tribunal passed in M.C.O.P.No.463 of 2012 dated 06.09.2013 and allow this appeal by awarding the compensation as against the 9th respondent/4th respondent/owner of the Motor Cycle.

For Appellants	: Mr.A.Shajahan
For R1-R5	: Mr.M.Pandeeswaran
For R6,R7,R9	: No Appearance
For R8	: Mr.R.Rajamani

JUDGEMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Tiruvelveli in M.C.O.P.No.463 of 2012 primarily on the ground of liability.

2. According to the claimants, the deceased was travelling as a pillion rider in a Hero Honda motor bike belonging to the 4th respondent and insured with the 5th respondent. The said Hero Honda vehicle was driven by one Dharmendran at the time of the accident. According to the claimants, the said vehicle was proceeding from South to North and near

Subbiahpuram Vilakku, it dashed against the rear portion of an abandoned tractor trailer belonging to the 1st respondent and insured with the 3rd respondent. The claimants have further contended that the tractor was parked without any parking lights or any safety provisions in the middle of the road and therefore, the said accident has happened due to the negligence on the part of the owner of the tractor and therefore, the 3rd respondent insurance company is liable to pay the compensation.

3. The 5th respondent had filed a counter contending that he is an unnecessary party to the proceedings and the tractor was parked without flickering of parking lights. The insurance company had further contended that the motor bike was driven by the said Dharmendran without possessing any valid driving license and therefore, only the owner of the vehicle, namely the 4th respondent would be liable to pay any compensation, if at all it is awarded by the tribunal.

4. The tribunal after considering the oral and documentary evidence, arrived at a finding that the abandoned tractor was parked on the left side of the road with proper protection and therefore, only the driver of the motor bike has driven the motor bike in a rash and negligent manner and dashed against the abandoned tractor trailer. In fact, an F.I.R

was registered under Exhibit P.1 as against the said Dharmendran and due to his death in the accident, the F.I.R was closed. The tribunal ultimately arrived at a finding that the driver of the bike alone was responsible for the accident.

5. The tribunal further found that the said bike is owned by the 4th respondent and insured with the 5th respondent insurance company. The tribunal further found that no schedule which is annexed to the policy of the motor bike was produced before the tribunal and therefore, the tribunal had directed the insurance company of the motor bike to satisfy the award and thereafter, granted liberty to them to recover the same from the owner of the vehicle. This award is under challenge in the present appeal by the insurance company of the motor bike.

6. Though an order of pay and recovery has been passed by the tribunal, the said award has not been challenged by the owner of the vehicle, namely the 4th respondent in the claim petition and the 9th respondent in the present appeal.

7. According to the learned counsel appearing for the appellant, the policy of the motor bike was marked as Exhibit R.10 before the

tribunal. The said policy will disclose that it is only an Act Only Policy and therefore, the pillion rider would not be covered by the said policy. Without considering the scope of the insurance policy, the tribunal has proceeded to award pay and recover as against the appellant insurance company. It is an admitted case that the deceased was only a pillion rider in the motor bike, which was driven by Dharmendran. Therefore, it is clear that the pillion rider is not covered by the Act only/Liability only policy. Therefore, he prayed for allowing the appeal and exonerating the insurance company from satisfying the award.

8. Though the owner of the bike, namely Sivan Pillai has been served through Court, he has not chosen to appear either in person or through counsel.

9. The learned counsel appearing for the insurance company of the tractor and trailer had contended that the trial Court has arrived at a correct finding that the tractor and trailer were parked away on the left side with proper precautions and therefore, they are not liable to pay any compensation.

10. I have carefully considered the submissions made on either side and perused the records.

11. The tribunal has arrived at a specific finding that the accident has taken place only due to the rash and negligent driving by the driver of the motor bike, in which the deceased was a pillion rider. The said award has not been challenged by the owner of the motor bike.

12. A perusal of Exhibit R.10 insurance policy of the motor bike reveals that it is an Act only/Liability only policy which does not cover a pillion rider. The learned counsel appearing for the appellant had relied upon a judgment of our High Court reported in ***2022 (1) TN MAC 305 (Branch Manager, New India Assurance Co. Ltd., Vs. Santhana Krishnan & Another)*** to contend that in an Act Only Policy the insurer is not liable in respect of a pillion rider.

13. When there is a coverage and there is only violation of policy conditions, the question of invoking the principle of pay and recovery would arise. When there is no coverage, the tribunal cannot invoke the principle of pay and recovery. In the present case, in view of the fact that the policy is an Act Only Policy and the claimants are the legal heirs of the deceased person who travelled as a pillion rider, the question of invoking the principle of pay and recovery would not arise.

14. In view of the above said deliberations, the award of the tribunal directing the insurance company to satisfy the award amount and thereafter, recover the same from the owner of the vehicle is hereby set aside. The quantum of award is hereby confirmed and the 4th respondent in the claim petition/9th respondent in the appeal is directed to pay the award amount. The amount deposited by the appellant insurance company shall be refunded along with accrued interest.

15. With the above said observations, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs. Consequently, connected Miscellaneous Petition is closed.

28.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal,
Tiruvelveli.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR ,J.

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Order made in
C.M.A(MD)No.284 of 2014

28.03.2023