BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.06.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.863 of 2017
and
C.M.P(MD)No.9238 of 2017

The United India Insurance Company Ltd.,
Through its Branch Manager,
No.III, No.91, Kamarajar Salai,
Madurai-625 009. ... Appellant/2nd Respondent

Vs.

1.K.Sankar Ganesh ... 1st Respondent/Petitioner

2.R.Gnanasekaran ... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to allow this appeal and set aside the judgment and decree, dated 04.10.2016 passed in M.C.O.P.No.873 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub-Court for M.C.O.P cases, Madurai.

For Appellant : No Appearance

For R1 : Mr.J.Barathan

JUDGMENT

The present appeal has been filed by the insurance company challenging the award of the Motor Accident Claims Tribunal, Madurai made in M.C.O.P.No.873 of 2013 primarily on the ground of liability.

2. According to the injured claimant, he was travelling as a pillion rider in a two wheeler driven by one Venkatesh. The said two wheeler was owned by the 1st respondent in the claim petition, namely Gnanasekaran. According to the claimant, the driver of the two wheeler had driven the vehicle in a rash and negligent manner and lost control and he dashed against the car. In the said accident, the claimant/pillion rider is said to have sustained

multiple grievous injuries. The claimant prayed for a compensation of Rs.2,00,000/-.

3. The owner of the two wheeler had remained ex parte and the insurance company had filed a counter contending that the accident has happened only due to the negligence on the part of the driver of the two wheeler and the policy is only an Act Policy which does not cover a pillion rider.

4. After considering the oral and documentary evidence filed on either side, the tribunal arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the rider of the two wheeler. The tribunal fixed the compensation at Rs.81,200/-. However, due to the fact that the policy does not cover a pillion rider, the tribunal directed the insurance policy to satisfy the award and thereafter, recover the same from the owner of the two wheeler. The said award is under challenge in the present appeal by the insurance company.

5. According to the learned counsel appearing for the appellant, admittedly the claimant has travelled as a pillion rider in a two wheeler. Even as per the contentions of the claimant, the accident has taken place only due to the rash and negligent driving on the part of the rider of the two wheeler. He further pointed out that the insurance policy of the said two wheeler has been marked as Exhibit R.1 which reveals that it is an Act Only Policy and it does not cover a pillion rider of a two wheeler. When there is no coverage, the question of invoking the principle of pay and recovery would not arise. Hence, he prayed for allowing the appeal and to exonerate the insurance company.

6. Per contra, the learned counsel appearing for the respondent/claimant had contended that the pillion rider should be treated as a third party to the contract of the insurance and the insurance company should be made liable to pay the compensation amount awarded by the tribunal.

7. I have carefully considered the submissions made on either side.

8. Even as per the admitted case of the claimant, he was travelling as a pillion rider in a two wheeler which was insured with the appellant insurance company. A perusal of Exhibit R.1 insurance policy clearly reveals that it is a Liability Only Policy which does not cover a pillion rider. The manner of accident as explained in the claim petition clearly establishes that the accident has happened only due to the rash and negligent driving on the part of the rider of the two wheeler. Therefore, the insurance company of the said two wheeler cannot be held responsible to satisfy the award with regard to a pillion rider.

9. The question of invoking pay and recovery would arise only in cases where there is a coverage. In all cases where there is no coverage, the principle of pay and recovery cannot be invoked. However, in the present case, after arriving at a finding that the policy is only a Liability Only Policy, the tribunal has proceeded to invoke the principle of pay and recovery which is not legally sustainable.

10. In view of the above said facts, the award of the tribunal as against the appellant insurance company is hereby set aside. However, the quantum and rate of interest fixed by the tribunal are hereby confirmed. The 1st respondent in the claim petition, namely the owner of the two wheeler is liable to satisfy the said award.

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

Sd/-
Assistant Registrar(CS III)

// True Copy //

/07/2023
Sub Assistant Registrar(CS)

gbg

To
1.The Special Subordinate Judge for M.C.O.P cases,,
Motor Accident Claims Tribunal,Madurai.
2 The Branch Manager,
United India Insurance Company Ltd.,
No.III, No.91, Kamarajar Salai,
Madurai-625 009.
3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.
+1 CC to M/s.A.S.MATHIALAGAN, Advocate (SR-26001[F] dated 05/06/2023)
+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-26111[F] dated 05/06/2023)

C.M.A(MD)No.863 of 2017
02.06.2023

MK/08.07.2023 3P 7C