IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

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THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal Nos.2677 & 2679 of 2019
and CMP. No.13255 & 13263 of 2019

M/s.IFFCO Tokio General Insurance Co. Ltd.,
Rep. By its Branch Manager
No.5, College Road, 2nd Cross,
Tiruppur. ... Appellant in both the appeals

Vs.

1. Deivanai
2. G.Kumaran
3. S.R.Thirumal

4. Royal Sundaram Alliance Insurance Co. Ltd.,
Rep. By its Branch Manager,
3rd Floor, Royal Tower,
New Bus Stand Road, Meyyanur,
Salem.

... Respondents in CMA. No.2677 of 2019

1. Silambarasan
2. G.Kumaran
3. S.R.Thirumal

4. Royal Sundaram Alliance Insurance Co. Ltd.,
Rep. By its Branch Manager,
3rd Floor, Royal Tower,
New Bus Stand Road, Meyyanur,
Salem.

... Respondents in CMA. No.2679 of 2019

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the

Motor Vehicles Act, 1988, against the judgment and decree dated 28.11.2018 made in MCOP. No.379 & 378 of 2017 on the file of the Motor Accident Claims Tribunal Additional District Judge, Hosur.

For Appellant : M/s.S.Arun kumar

For Respondents : Mr.Loganathan R1
Mr.M.Venkadesh Kumar R2
Mrs.Harini
For M/s.M.B.Gopalan Associates R4
for both the appeals
R3 No appearance
in CMA No.2677 of 2019
R3~NRN in CMA. No.2679 of 2019

COMMON JUDGMENT

These appeals have been filed seeking to quash the judgment and decree dated 28.11.2018 made in MCOP. No.379 & 378 of 2017 on the file of the Motor Accident Claims Tribunal Additional District Judge, Hosur.

2. It is the case of the claimants that on 17.01.2017, the first respondent in CMA. No.2677 of 2019 was driving the motor cycle belonging to the second respondent and insured with the appellant herein, along with his sister, who is the first respondent in CMA. No.2679 of 2019 as pillion rider. At that time, the lorry bearing Reg. No.TN 29 AP 8402 driven by its driver belonging to the third respondent which was insured with the 4th respondent was parked in the highway road without any parking light. In the absence of any indications, it seems to be the moving vehicle, the claimants hit the lorry and applied sudden break and fell down from the motor cycle and sustained injuries and admitted in

the hospital. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the negligent act on the part of the driver of the lorry and directed the appellant and 4th respondent insurance company to pay the compensation with the ratio of 70:30. Having rendered such a finding, the Tribunal proceeded to determine the total compensation payable at Rs.12,78,926/~ and 3,74,200/~ respectively to the claimants under various heads. The Tribunal directed the above compensation to be paid with interest at the rate of 7.5% p.a.

4. The appellant/Insurance company aggrieved over the award by the Tribunal, has filed these appeals questioning the negligence and liability.

5. The learned counsel for the appellant/insurance company submitted that the accident had happened only due to rash and negligent riding of the motor cycle. The Police has registered an FIR as against the first respondent/claimant in CMA. No.2677 of 2019. Based on which, the Tribunal has fixed the 70% negligence as against the first respondent in CMA. No.2677 of 2019 and fixed 30% negligence as against the lorry driver. However, the

insurance policy obtained from the second respondent/owner of the two wheeler is a basic premium policy. No pillion rider is not covered in the said policy. In such circumstances, fastening the liability as against the the appellant is not sustainable. Hence, this Court may quash the award passed by the Tribunal.

6. The learned counsel appearing for the claimants submitted that after considering the oral and documentary evidence, the Tribunal has fixed the liability as against the appellant and the 4th respondent insurance company, which does not warrant any interference.

7. The learned counsel appearing for the 4th respondent submitted that the dispute with regard to the negligence is between the appellant and the claimant. Fastening 30% negligence as against the driver of the lorry and fixed the liability as against the 4th respondent is erroneous, which needs interference.

8. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.

9. The short issue that arises for consideration in the present appeal is as to whether the insurance company can be saddled with the liability. It is admitted that the lorry was parked on the left side of the road. It is also not disputed fact that the claimant Silambarasan was driving the two wheeler and

dashed against the parked lorry and sustained injuries.

10. In the light of these admitted facts, the main contention that was raised by the appellant that the insurance policy which was marked as Ex.R1 does not cover the person who traveling as pillion rider and P.A. coverage. It is only a basic policy. When there is no contract between the driver and the pillion rider with the insurance company for payment of the premium, forcing the insurance company to pay compensation is not sustainable.

11. It is quite clear from the above discussion that the insurance company cannot be mulcted with liability under the insurance policy and hence, the finding of the Tribunal to the effect that the insurance company must pay the compensation is liable to be interfered by this Court and the same is hereby set~aside.

12. The compensation fixed by the Tribunal can be claimed from the owner of the two wheeler, the second respondent in these appeals.

13. In the result, this Civil Miscellaneous appeals are allowed and the liability that was fastened against the appellant/insurance company is alone set~aside. Any amount that was deposited by the appellant/Insurance company shall be permitted to be withdrawn with accrued interest. However, liberty is

granted to the claimants to recover the compensation with accrued interest from the second respondent, who is the owner of the vehicle in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

13.11.2024

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Speaking Judgment/Non~speaking Judgment
Index :Yes/No
Neutral citation: Yes/No

To
The Judge,
Motor Accident Claims Tribunal,
Additional District Judge, Hosur.

M.DHANDAPANI.,J
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Civil Miscellaneous Appeal
Nos.2677 & 2679 of 2019

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