



C.M.A.No.1661 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1661 of 2020

and

C.M.P.No.12257 of 2020

National Insurance Company Ltd,
Rep. by its Manager, Branch Manager,
88-F, Bye pass road, Dharmapuri.

... Appellant

Vs.

1. K.Vasudevan
2, M.Velu

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment dated 23.01.2020, passed in M.C.O.P.No.73 of 2018 by the Motor Accidents Claims Tribunal (Special Subordinate Judge), Dharmapuri.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.M.Selvam for R1
Notice Dispensed with R2
(Died)

JUDGMENT

The above appeal is filed by the appellant / insurance company against the decree and judgment dated 23.01.2020, passed in



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M.C.O.P.No.73 of 2018 by the Motor Accidents Claims Tribunal
(Special Subordinate Judge), Dharmapuri.

2. In view of the nature of judgment to be passed, notice to the second respondent is dispensed with.

3. It is the case of the claimant that, on 31.10.2002 at about 19:30 hours, when the first respondent / claimant was travelling as a pillion rider in the vehicle bearing Regn.No.TN 29 B 0461 insured with the appellant / insurance company driven by the second respondent, at that time the second respondent lost his control and dashed the vehicle bearing Regn.No.TN 29 C 103, due to which the claimant fell down from the vehicle and sustained grievous injuries. Thereby, the first respondent/claimant has filed a claim petition seeking compensation in a sum of Rs.5,00,000/-.

4. Before the Tribunal, the claimant / first respondent has examined P.W.1 and marked Exs.P.1 to Ex.P.15. On the side of the respondents, they have neither examined any witnesses nor marked any



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exhibits. After adjudication, the Tribunal awarded a sum of Rs.1,03,014/- as compensation to the first respondent. Challenging the same, the appellant / insurance company has preferred the present appeal.

5. The learned counsel appearing for the appellant / insurance company submitted that the insurance policy is an Act Only policy, which covers only third party risks and it does not cover the risk of the person driving the vehicle or the pillion rider in the vehicle. However, without properly appreciating the nature of the policy, the Tribunal has granted the compensation, which deserves to be interfered with.

6. The learned counsel appearing for the first respondent / claimant submits that even Act Only Policy covers own damage to the vehicle and the claimant not being the owner of the vehicle, the proper course open to the Tribunal, if at all, is to pay the compensation and recover the same from the owner of the vehicle and, therefore, the award passed by the Tribunal does not require any interference.

7. Heard the learned counsel for the appellant and the learned



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counsel for the first respondent / claimant and perused the materials placed on record.

8. The 2nd respondent is the owner of the vehicle, while the 1st respondent was the pillion rider in the vehicle driven by the 2nd respondent.

9. The sole ground on which the award is challenged is that the vehicle is covered only by an Act Only Policy, which covers only third party liability and own damage is not covered and, therefore, no compensation is payable.

10. In this regard, this Court perused Ex.P-3, the policy, which has been issued in respect of the vehicle and it is seen that the policy is an Act Only Policy which covers only liability with regard to third parties. The pillion rider of the vehicle is not a third party within the meaning of the insurance policy and there being no separate amount paid for covering the pillion rider, the insurance company cannot be fastened with any liability to pay the compensation. However, the Tribunal lost sight



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of the very crucial fact and had granted compensation, which is grossly erroneous and the same deserves to be set aside.

11. Accordingly, the Civil Miscellaneous Appeal is allowed and the judgment and decree dated 23.01.2020 made in M.C.O.P.No.73 of 2018 passed by the Motor Accidents Claims Tribunal (Special Subordinate Judge), Dharmapuri, directing the appellant to pay the compensation to the 1st respondent is set aside. If any amount deposited by the appellant/insurance company, the appellant/insurance company is permitted to withdraw the same by filing appropriate application before the Tribunal. The first respondent / claimant is granted liberty to recover the compensation awarded from the owner of the motorcycle bearing Regn.No.TN 29 B 0461 in the manner known to law. Since the second respondent is dead as per the records, liberty is granted to the first respondent to recover the same from the legal heirs of the second respondent. No costs. Consequently, connected miscellaneous petition is closed.

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Netrual Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

- 1.Motor Accidents Claims Tribunal (Special Subordinate Judge),
Dharmapuri.
- 2.The Section Officer, V.R.Section, High Court, Madras.

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