



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2694 of 2023

Sathiyamoorthy

..Appellant

.VS.

1.Ragavendran

2.United India Insurance Co.,Ltd.,
Third party service Hub
Plot No.35, 36, 37, AR plaza
45 feet Road
Balaji Nagar Extension, saram
Puducherry 605 011.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award in judgement and Decree dated 27.06.2023 made in MCOP No.2708 of 2016, on the file of the Motor Accident Claims Tribunal/(II Additional Sub Judge, Cuddalore).

For Appellant : Mrs.Ramya V.Rao

For Respondents : Mrs.Sanhya Priyadharshini.J.V.
for Mr.C.Paranthaman
for R2

JUDGMENT

The present appeal has been filed by the claimant against the award passed by the Tribunal in MCOP.No.2708 of 2016, dated 27.06.2023, rejecting the claim petition.



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2.The case of the claimant is that on 20.04.2016, the claimant was travelling in a two wheeler as a pillion rider at Srimushnam – Nachiyarpettai Main Road and at about 14.45 hours, the rider of the two wheeler lost control of the vehicle since he was driving the vehicle in a rash and negligent manner. He applied sudden break and the claimant fell down and sustained comminuted fracture right wrist, fracture shaft of right femur and other injuries all over the body. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation from the rider of the two wheeler and the insurer.

3.The Tribunal dismissed the claim petition on the ground that the claimant in this case was a gratuitous passenger and hence the insurance company cannot be made liable to pay the compensation. The second ground on which the claim petition was dismissed was on the ground that the accident register showed it is a case of self fall. The third ground on which the Tribunal rejected the claim petition is that there was no insurance coverage for the pillion rider. Aggrieved by the award passed by the Tribunal, the present appeal has been filed before this Court.

4.The learned counsel for the appellant submitted that the insurance policy was marked as Ex.P.7. The limits of liability in that policy shows that it was a comprehensive/package policy. Therefore, the pillion rider is covered and the compensation must be paid in this case by the insurance company.



5.The other ground that was raised by the learned counsel for the appellant is that the Tribunal went by the note made in the accident register to the effect that it was a self fall. It was contended that the claimant was a pillion rider and the rider of the vehicle lost control and fell down. Therefore, it was a case of self fall and that will not in any way come in the way of the pillion rider seeking for payment of compensation.

6.Per contra, the learned counsel for the insurance company submitted that the policy that is now shown by the claimant was not issued by the 2nd respondent company and that all the particulars contained in the policy are denied.

7.In the considered view of this Court, both the respondents did not contest the claim petition and they were set ex-parte before the Tribunal. The ground that has been raised by the insurance company requires a serious consideration and the same can be done only if the evidence is let in and the witness is examined. In view of the same, this Court is inclined to remand the matter back to the file of the Tribunal to deal with the same on its own merits and in accordance with law.

8.In the light of the above discussion, the award passed by the Motor Accident Claims Tribunal/(II Additional Sub Judge, Cuddalore), in MCOP.No.2708 of 2016, dated 27.06.2023, is hereby set aside and the matter is remanded back to the file of the Tribunal. The Tribunal shall issue notice to all the parties and shall deal with the



claim on its own merits and in accordance with law. All the issues are kept open to be dealt with by the Tribunal. The Tribunal shall complete the proceedings within a period of four months from the date of receipt of copy of the judgment.

In the result, this Civil Miscellaneous Appeal is disposed of in the above terms. No costs.

22.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
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To

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2. Motor Accident Claims Tribunal/
(II Additional Sub Judge, Cuddalore).



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N. ANAND VENKATESH., J

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