



C.M.A(MD)No.717 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2024

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.717 of 2019

and

C.M.P(MD)No.9004 of 2019

M/s.United India Insurance Co.Ltd.,
Through its Branch Manager.

... Appellant/2nd Respondent

Vs.

1.Thirumani

2.Puluthiraja

... Respondents/Claimants

3.John Boseco

... Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside fair and decreetal order, dated 22.02.2019 made in M.C.O.P.No.445 of 2017 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Tirunelveli.

For Appellant : Mr.B.Rajesh Saravanan

For R1&R2 : Mr.V.Sasikumar

For R3 : No Appearance



C.M.A(MD)No.717 of 2019

WEB COPY

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the award in M.C.O.P.No.445 of 2017 on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tirunelveli primarily on the ground of liability.

2. As per the claim petition, the deceased Lokesh was travelling as a pillion rider in a two wheeler that was driven by one Vairamuthu and owned by the 1st respondent in the claim petition. Admittely, the said two wheeler was insured the 2nd respondent. On the date of accident, the two wheeler had got skid and the pillion rider had fallen down and sustained grievous injuries and succumbed to the injuries. The parents of the deceased person have filed the present claim petition claiming a compensation of Rs.20,00,000/-.

3. The tribunal after considering the entire evidence on record, arrived at a finding that the driver of the two wheeler was negligent in driving the vehicle and the said accident has taken place only due to the said effect. The Insurance Company has taken a legal objection that they are not liable to pay compensation in view of the fact that the policy is a Liability Only Policy which does not cover the pillion rider. However,



C.M.A(MD)No.717 of 2019

the said objection was rejected by the tribunal and it has proceeded to pass an award of pay and recovery. Challenging the same, the present appeal has been filed by the Insurance Company.

4. According to the learned counsel appearing for the appellant / Insurance Company, when there is no coverage for the pillion rider under an Act Only Policy, the question of ordering pay and recovery would not arise. The learned counsel appearing for the appellant had relied upon a judgment of the Hon'ble Supreme Court in **2008 (3) TAC 1 (Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V. & Others)**, wherein it has been held that when the contract of the insurance does not cover a pillion rider, the liability of the Insurance Company cannot be extended to the pillion rider. The Supreme Court has further held that the pillion rider in a two wheeler cannot be treated as a third party and has proceeded to exonerate the Insurance Company.

5. Per contra, the learned counsel appearing for the respondents have contended that the pillion rider is neither the owner of the vehicle nor the rider and therefore, he should be treated as a third party. The award of the tribunal for pay and recovery may be sustained.



C.M.A(MD)No.717 of 2019

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

7. The insurance policy of the vehicle has been marked as Exhibit R.6. A perusal of the said policy indicates that it is an Act Only Policy which does not cover a pillion rider. Admittedly, as per the claim petition, the deceased was a pillion rider. Therefore, the judgment of the Hon'ble Supreme Court reported in **2008 (3) TAC 1 (Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V. & Others)** is squarely applicable to the facts of this case. When there is no coverage for pillion rider, the tribunal was not right in awarding pay and recovery. The tribunal ought to have exonerated the Insurance Company. As far as the quantum of award is concerned, it is reasonable and this Court is not inclined to interfere in the quantum of the award.

8. In view of the above said deliberations, the award of the tribunal is modified to the effect that the appellant / Insurance Company is exonerated and the entire liability is mulcted upon the the owner of the two wheeler who is arrayed as the 3rd respondent herein / 1st respondent in the claim petition. In other respects, the award of the tribunal stands confirmed.



C.M.A(MD)No.717 of 2019

WEB COPY

9. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

24.04.2024

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

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To

- 1.The Motor Accident Claims Tribunal
(Chief Judicial Magistrate Court),
Tirunelveli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.717 of 2019

R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.717 of 2019

24.04.2024