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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No. 872 of 2014

and

M.P(MD)No. 3 of 2014

The Branch Manager,
The New India Assurance Company Limited,
No.674, Periyakulam Road, Madurai.

...Appellant

Vs.

1. N.Soundarapandian

2. P.N.S.Gopinath,

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, challenging the Award and Decree, dated 03.09.2013 made in M.C.O.P. No.56 of 2006 on the file of the Motor Accident Claims Tribunal/ IV Additional Sub Court, Madurai.

For Appellant : M/s.B.Vijay Karthikeyan

For Respondents : No appearance

JUDGEMENT

The Insurance Company has filed this Civil Miscellaneous Appeal, challenging the Award, dated 03.09.2013 passed in M.C.O.P. No.56 of 2006 on



the file of the Motor Accident Claims Tribunal/IV Additional Sub Court, Madurai.

2. It is a case of fatal. The contention of the Insurance Company is that the deceased was travelling in two -wheeler as a pillion rider. Since the policy is only an Act policy, hence the pillion rider is not entitled to any compensation. The owner of the vehicle had paid premium on the Act policy and therefore, liability was fixed on the Insurance company.

3. The Insurance company has produced the original copy of the Insurance policy before this Court by way of additional documents. He has also relied on the Judgment rendered in the case of the ***Divisional Manager, United India Insurance Company Limited Vs. Meena, reported in 2023 (1) TNMAC 68***, wherein it has been categorically held that, if it is an Act policy, the pillion rider should be considered as passenger, therefore, the Insurance Company is liable to pay compensation. And Pay and Recovery also cannot be ordered. The relevant portion is extracted hereunder:

.....

“12. It is evident from Ex.R.1 policy that the First Respondent has paid Premium of Rs.50 towards compulsory PA for Owner Driver. But admittedly no premium was paid to cover the



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Pillion Rider. Considering the above and in view of the legal position above referred, this Court has no hesitation to hold that the Appellant-Insurer is not liable to pay Compensation to the Claimants and the question of invoking the Doctrine of Pay and Recovery does not arise at all. Consequently, this Court concludes that the Award, dated 10.11.2021 is liable to be set aside and on considering the other facts and circumstances, the parties are to be directed to bear their own costs.”

4. He has also relied on the Judgment passed by the Hon'ble Division Bench of this Court in ***C.M.A(MD)No.2163 of 2017, dated 17.06.2022 in the case of S.Vijayalakshmi and others Vs. Ashok Brothers Implex Limited and another one***, wherein, in paragraph No.16, the Hon'ble Division Bench of this Court has held as under:

“.....For the above reasons, the finding of the Tribunal directing the 1st respondent/owner of the car to pay compensation and dismissing the claim petition against the 2nd respondent/Insurance Company does not warrant any interference by this Court.”

5. By taking all these reasons into consideration, this Court is inclined to allow this Civil Miscellaneous Appeal. Accordingly, this Civil Miscellaneous Appeal is allowed. The entire liability is fixed on the owner of the vehicle and therefore, the owner of the vehicle is liable to pay entire



compensation.

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6. It is seen that, at the time of admission, the Appellant/Insurance Company has already deposited 50% of the compensation granted by the Tribunal. Therefore, the appellant/Insurance Company is permitted to withdraw the said amount. The owner / 2nd respondent herein is directed to deposit the entire compensation amount along with interest at the rate of 7.5% with Costs, within a period of 12 weeks from the date of receipt of a copy of the Judgment. On such deposit the claimant is permitted to withdraw as per law. No Costs. Consequently, C.M.A(MD)No.3 of 2014 is closed.

23.04.2024
(2/2)

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

1. The Motor Accident Claims Tribunal/
IV Additional Sub Court,
Madurai
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
C.M.A(MD)No. 872 of 2014

23.04.2024