



C.M.A.(MD).No.192 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.192 of 2020

M/s.United India Insurance Company Limited,
Tenkasi. ... Appellant/3rd Respondent

-VS-

1. Poothathan ... 1st Respondent/Petitioner
2. Ramaiah ... 2nd Respondent/1st Respondent
3. Subramanian ... 3rd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree passed in M.C.O.P.No. 404 of 2014, dated 23.07.2019 on the file of the Motor Accident Claims Tribunal-cum-Additional Sub Court, Tenkasi.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.M.S.Suresh Kumar
for R1

: No appearance – R2 and R3



C.M.A.(MD).No.192 of 2020

WEB COPY

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/ Insurance Company challenging the award passed in M.C.O.P.No. 404 of 2014, on the file of the Motor Accident Claims Tribunal-cum-Additional Sub Court, Tenkasi, primarily on the ground of liability.

2. The injured claimant was travelling as a pillion rider in a two wheeler which was owned and driven by the second respondent in the claim petition. The said two wheeler was insured with the third respondent in the claim petition. According to the claimant, the first respondent in the claim petition had driven his bicycle in a drunken mood and in order to avoid collusion with a cycle, the second respondent had applied sudden brake which has resulted in fallen down of the vehicle. Due to the said impact, the claimant had sustained grievous injuries, for which, he had claimed a sum of Rs.5,00,000/- towards compensation.

3. The appellant/Insurance Company had filed a counter disputing the liability and quantum.



C.M.A.(MD).No.192 of 2020

WEB COPY

4. The Tribunal, after considering the evidence on either side, has arrived at a finding that the claimant is entitled to a compensation of Rs.75,000/- (Rupees Seventy Five Thousand only). The Tribunal has further found that since the policy is in subsistence, the Insurance Company is liable to pay the compensation. Challenging the said award, the present appeal has been filed.

5. According to the learned counsel appearing for the appellant/ Insurance Company, the two wheeler is covered by liability only policy. Therefore, it does not cover the pillion rider. The Tribunal has not considered the coverage under the Insurance policy and has proceeded to mulct the liability upon the Insurance Company. Hence, he prayed for exonerating the appellant/Insurance Company.

6. Per contra, the learned counsel appearing for the first respondent/ claimant had contended that the pillion rider should be treated as a third party contract of insurance and therefore, he is covered by the policy. Hence, he prayed for sustaining the award passed by the Tribunal as against the Insurance Company.



C.M.A.(MD).No.192 of 2020

WEB COPY

7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. It is not in dispute that the injured claimant has travelled as a pillion rider and due to the application of sudden brake of the said two wheeler, the claimant had fallen down and sustained injuries. There is no offending vehicle in the said accident. A perusal of Ex. R1- Insurance Policy indicates that it is a “liability only” policy, covering only the third parties. The judgment of the Hon'ble Supreme Court in **(Oriental Insurance Company Vs. Sudhakaran K.V and others)** reported in **2008 (3) T.A.C 1 (SC)** has held that the pillion rider cannot be treated as a third party under the liability and therefore he is not covered by the said policy. The said judgment is squarely applicable to the facts of the present case. Since there is no coverage, the question of pay and recovery also would not arise.

9. In view of the above said deliberations, the award of the Tribunal mulcting the liability upon the Appellant/Insurance Company is hereby set aside and the entire liability is fastened upon the second respondent in the claim petition, who is the owner of the two wheeler. In other respects, the award of the Tribunal stands confirmed. The appellant/Insurance Company is



C.M.A.(MD).No.192 of 2020

exonerated from the liability. Award amount, if any, deposited by the Insurance Company, shall be refunded to them along with accrued interest.

10. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs.

30.04.2024

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

1. The Motor Accident Claims Tribunal-
cum-Additional Sub Court,
Tenkasi.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.192 of 2020

R.VIJAYAKUMAR,J.

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C.M.A(MD)No.192 of 2020

30.04.2024