



C.M.A.(MD).No.411 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.411 of 2024
and C.M.P.(MD).No.5402 of 2024

United India Insurance Co. Ltd.,
Marthandam Branch,
represented by its Branch Manager,
P.P.K.Building, Main Road,
Marthandam – 629 165,
Vilavancode Taluk, Kanniyakumari District.

... Appellant/3rd Respondent

Vs.

1.Abilash Jose

... 1st Respondent/Petitioner

2.Jerinalal

3.Ramesh

... 2nd & 3rd Respondents/
1st & 2nd Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and Decree, dated 15.02.2023 passed in M.C.O.P.No.92 of 2018 on the file of the Motor Accident Claims Tribunal, Sub Court, Kuzhithurai.

For Appellant : Mr.A.S.Mathialagan

For Respondents : Mr.K.P.Narayanakumar for R1
R2 – No Appearance



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JUDGMENT

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This appeal has been filed to set aside the Judgment and Decree, dated 15.02.2023 passed in M.C.O.P.No.92 of 2018 on the file of the Motor Accident Claims Tribunal, Sub Court, Kuzhithurai.

2.The facts in brief:

The petitioner was studying first year B.Ed., in Immanuel Arasar College of Education, in Nattalam, near Marthandam. On 01.01.2018 at about 12.00 a.m., the petitioner was travelling as a pillion rider in a two wheeler bearing registration No.TN 75 A 4888, which was driven by one Jerinlal on the Manjalumoodu – Mukkuttukal road from south to north direction. When they were nearing occurrence place, Jerinlal driven the vehicle in rash and negligent manner. As a result of which, they fell down and the petitioner fell and he suffered injuries. He has taken to Dr.Issac Bone & Joint Specials Hospital, Marthandam. He was taken treatment. A case was registered in Crime No.14 of 2018 against Jerinlal. He admitted the guilt in S.T.C.No.343 of 2018 before the learned Judicial Magistrate No.II, Kuzhithurai and paid fine amount. After the discharge now he is continuing the treatment. The second respondent is



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the owner of the vehicle. The third respondent is Insurer. Claiming compensation amount of Rs.5 lakhs, the petition was filed.

3.That was resisted by the Insurance Company by filing counter stating that the accident took place because of the rash and negligent driving on the part of the first respondent. The first respondent Insurance Company is not liable to pay any compensation. He was not wearing helmet at the time of accident. He did not own driving licence at the time of accident.

4.To Prove the case on the side of the petitioner, he himself was examined as PW1. 16 documents were marked. On the side of the respondent RW1 was examined and two documents were marked.

5.Regarding the first issue, the tribunal recorded the finding that because of the rash and negligent driving on the part of the first respondent, the occurrence took place. The petitioner is entitled for compensation.



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6.Regarding the second issue of compensation noting that the injuries are grievous in nature, disability was fixed at 5%. As per the personal accident coverage, Rs.1 lakh was awarded for pain and sufferings. Rs.10,000/- as attendant charges. To that customary amount namely transport expenses Rs.5,000/-, nutrition expenses Rs.10,000/- and compensation for the injury Rs.1,00,000/- were also awarded. Totally Rs.2,93,855/- was awarded as compensation. Against which the insurance company preferred this appeal.

7.Heard both sides.

8.It is the case of injury. The petitioner was a pillion rider in a vehicle belongs to the first respondent herein. The vehicle was driven by the second respondent herein. The appellant is the Insurance company as noted above. The Tribunal has not given any finding as to the effect that whether a pillion rider is entitled for any compensation from the owner of the vehicle. It appears that the first respondent namely the driver of the vehicle driven the vehicle from the second respondent and drove the same with the pillion rider namely the claimant who is the first



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respondent herein. Coverage to the pillion rider is not entitled for any compensation and that is the only submission made by the Insurance company.

9.Per contra, it is the contention on the part of the claimant that no such counter was filed before the Tribunal. Before the tribunal the insurance copy is also produced, wherein, we find that that premium amount of Rs.720/- was paid towards the third party liability and Rs.50/- was paid as premium for personal accident coverage for traveller and owner. Totally Rs.770/- was paid as premium amount and no premium was paid towards the liability of the pillion rider.

10.From the settled law, by the the Honourable Supreme Court in the case of ***General Manager, United India Insurance Co. Ltd., Vs. M.Laxmi and others*** reported in ***2009 ACJ 104*** , which followed by this Court in number of cases, held that unless there is a coverage for pillion rider, he is not entitled.



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11.Only the rider of the vehicle namely, who is the first respondent herein, is responsible to pay the compensation amount along with the owner of the vehicle namely the second respondent herein. The insurance company no liability be arises. The finding of the Tribunal is not proper. Amount is not meagre. Accordingly, the award passed by the tribunal directing the appellant herein to pay the compensation amount is set aside. The Insurance company excluded from the liability.

12.Accordingly, this civil miscellaneous appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.07.2024

Index : Yes / No
Internet : Yes / No
TM

To

- 1.The Subordinate Judge, Motor Accident Claims Tribunal, Kuzhithurai.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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