IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 1265 of 2023
AND
CMP NO. 12410 OF 2023

Reliance General Insurance Company
Ltd
No.6, Haddows Road, 4th Floor,
Nungambakkam, Chennai 32.

Appellant

Vs

1. Shanthi

2.N.Rajesh

3.S.V.Hariharan

Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Sec.173 of Motor Vehicle Act, praying to set aside the Judgment and Decree dated 22-09-2022 passed in MCOP No.6036 of 2016 on the file of MACT III Small Causes Court, Chennai.

For Appellant: Mr.P.Suresh Srinivasan

For Respondents: Mr. D.Velu For R1and R2
R3 - No Appearance (paper Publication Effected)

JUDGMENT

Challenging the impugned award passed by the Motor Accident Claims Tribunal, iII Judge, Small Causes Court, Chennai in MCOP No.6036 of 2016, dated 22.09.2022, the appellant/2nd respondent insurance company preferred this Civil Miscellaneous Appeal.

2.The case of the 1st respondent/petitioner is that on 01.01.2015 at about 08.30 p.m. when the deceased was riding his two wheeler bearing Regn. No. TN-03 M-9212 at Kamarajar Salai, near Hadams Road signal from south to north, while turning to Parrys, the two wheeler bearing Regn. No. TN-04-AP-3974 was driven in a rash and negligent manner, dashed petitioner's husband's two wheeler, thereby he sustained grievous injuries all over the body and died. Under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation of Rs.20,00,000/-.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the rider of the 2nd respondent. Having come to such a conclusion, the Tribunal fixed the total compensation payable at Rs.10,00,400/- under various heads and the said compensation was directed to be paid with interest at the rate of 7.5% per annum.

4.The Insurance Company aggrieved by the quantum of compensation fixed by the Tribunal has filed the present appeal before this Court.

5. The learned counsel for appellant argues that there is violation of policy condition by the owner cum 3rd respondent herein. Inspite of notice issued by the insurance company, the owner cum 3rd respondent not produced any driving license, which shows that there is violation of policy condition. At the time of accident, son of owner has driven the vehicle, but no driving license was produced. So, there is violation of policy condition. In such circumstances, the Tribunal ought to have awarded compensation with the direction to pay and recovery, but no such direction was given. Hence, the award is under challenge.

6. The learned counsel for respondents 1 and 2 appeared. Inspite of notice sent to owner/3rd respondent and paper publication was also effected, there is no representation on the side of 3rd respondent.

7. On perusal of records, the fact reveals that the 3rd respondent is owner of Pulser bike bearing Regn. No.TN-04 AP-3974 and the said vehicle was insured with the insurance company, appellant herein on the said date of accident, which is an undisputed fact. It is also revealed that on the date of accident, son of owner/3rd respondent driven the vehicle. The main objections raised on the part of appellant insurance company is that the rider of two wheeler has not possessed valid license to drive the two wheeler. Therefore, they have also issued notice to the 3rd respondent to produce the driving license, which was not produced. So, there is violation of policy condition as submitted on the side of appellant. In such circumstances, though the appellant insurance company is liable to pay compensation, since the policy was in force on the date of accident, at the same time, liberty is granted to the appellant insurance company to recover the compensation from the owner/3rd respondent, since there is violation of policy condition. But, the tribunal has not awarded pay and

recovery as prescribed under the Insurance Act. So, the objections raised by the insurance company is sustainable.

8. In the result, this Civil Miscellaneous Appeal is allowed. The appellant insurance company is granted liberty to recover the amount awarded by the tribunal from the owner/3rd respondent under the principle of pay and recovery. Notice served and the paper publication was also effected, but none appeared on the side of 3rd respondent. The appellant insurance company is directed to pay the balance award amount with accrued interest as arrived by the Tribunal within a period of eight weeks from the date of receipt of copy of this judgment No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

07-07-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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To
1. Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai.

2. Section Officer, VR Section, Madras High Court.

T.V.THAMILSELVI J.

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