IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1771 of 2021
and
C.M.P.No.9424 of 2021

Reliance General Ins.Co.Ltd.
Branch Office, III Floor,
408, Perundurai Road,
Erode. ... Appellant

Vs.

1. T.Leelavathi
2. C.Duraisamy ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award dated 20th February 2019 in M.C.O.P.No.211 of 2015 on the file of the Motor Accidents Claims Tribunal, Sub Judge, at Perundurai.

For Appellant : M/s.C.Bhuvanasundari

For Respondents : Mr.S.Kaithamalai Kumaran for R1
No appearance for R2

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JUDGMENT

The above appeal is filed by the appellant / Insurance company seeking to set aside the Judgment and Decree dated 20.02.2019 passed in M.C.O.P.No.211 of 2015 by the Motor Accidents Claims Tribunal, Sub Judge, at Perundurai.

2. It is the case of the appellant / Insurance company that, on 25.04.2015 at about 11.00 a.m., when the first respondent was travelling as a pillion rider in the vehicle bearing Regn.No.TN 33 BH 6989 driven by the second respondent insured with the appellant / insurance company, at that time the two wheeler lost its control and fell down from the vehicle, due to which the first respondent sustained grievous injuries all over her body and was admitted in the Hospital. Thereby, the first respondent / claimant has filed a claim petition claiming a sum of Rs.2,00,000/- for the injuries sustained by claimant.

3. Before the Tribunal, the claimant / first respondent examined P.W.1 and marked Exhibits P.1 to Ex.P.9. On the side of the appellant / insurance company, they examined R.W.1 and marked Exs.R.1 and R2. After trial, the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely

due to the rash and negligent driving on the part of the driver of the two wheeler / second respondent and awarded a sum of Rs.94,614/- towards compensation for the injuries sustained by the claimant and held that the appellant / insurer of the Motor cycle is liable to pay the above compensation. Challenging the same, the above appeal has been filed by the insurer of the motor cycle / appellant insurance company.

4. The learned counsel appearing for the appellant / insurance company submitted that the insurance policy is an Act Only policy, which covers only third party risks and it does not cover the risk of the person driving the vehicle or the pillion rider in the vehicle. However, without properly appreciating the nature of the policy, the Tribunal has granted the compensation, which deserves to be interfered with.

5. The learned counsel appearing for the first respondent / claimant submits that even Act Only Policy covers own damage to the vehicle and the claimant not being the owner of the vehicle, the proper course open to the Tribunal, if at all, is to pay the compensation and recover the same from the owner of the vehicle and, therefore, the award passed by the

Tribunal does not require any interference.

6. Heard the learned counsel for the appellant and the learned counsel for the first respondent / claimant and perused the materials placed on record.

7. The 2nd respondent is the driver of the vehicle, while the 1st respondent was the pillion rider in the vehicle driven by the 2nd respondent.

8. The sole ground on which the award is challenged is that the vehicle is covered only by an Act Only Policy, which covers only third party liability and own damage is not covered and, therefore, no compensation is payable.

9. In this regard, this Court perused the policy document, which has been marked, which has been issued in respect of the vehicle and it is seen that the policy is an Act Only Policy which covers only liability with regard to third parties. The pillion rider of the vehicle is not a third

party within the meaning of the insurance policy and there being no separate amount paid for covering the pillion rider, the insurance company cannot be fastened with any liability to pay the compensation. Further, it is to be pointed out that pillion rider cannot claim compensation u/s.163 A of the Motor Vehicles Act and the 1st respondent though is the owner of the vehicle however has travelled in the vehicle as a pillion rider and therefore cannot claim compensation and in the absence of any separate amount being paid towards the coverage for pillion rider, the same does not satisfy the requirement of IMT.18 of the Personal Accidental coverage to unnamed hirer. However, the Tribunal lost sight of the very crucial fact and had granted compensation, which is grossly erroneous and the same deserves to be set aside.

10. Accordingly, for the reasons aforesaid, the Civil Miscellaneous Appeal is allowed and the judgment and decree dated 20.02.2019 made in M.C.O.P.No.211 of 2015 passed by the Motor Accidents Claims Tribunal, Sub Judge, at Perundurai, is set aside. If any amount deposited by the appellant/insurance company, the appellant/insurance company is permitted to withdraw the same by filing appropriate application before

the Tribunal. The first respondent / claimant is at liberty to recover the compensation amount from the owner of the motor cycle bearing Regn.No.TN 33 BH 6989 in a manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

06.01.2025

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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To

1. Motor Accidents Claims Tribunal, Sub Judge, at Perundurai.

2.The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.

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