IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 12 /12/ 2024

JUDGMENT DELIVERED ON: 29 / 01 / 2025

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA No.2093 of 2023

1. Pula Shanmugam

2. Minor. Pula Anudeep
[Minor represented by his father and natural
guardian, the first appellant herein] ... Appellants / Petitioners

Vs.

1. Yugender Ravellah

2. The Manager,
New India Assurance Co. Ltd.,
No.232, NSC Bose Road,
Parrys Corner, Chennai – 600 001.

3. The Manager,
Megma HDI General Insurance Co. Ltd.,
No.3A, Nelson Manicam Road,
Chennai – 29. ... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated June 19, 2023 made in M.C.O.P.No.44 of 2022 on the file of the Motor Accident Claims Tribunal No.1, Special District Court, Thiruvallur.

For Appellant : Mr.G.Karthikeyan, Senior Counsel for Mr.E.Karthik Raja

For R2 : Mr.T.Jayaraman

For R1 & R3 : No appearance

JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated June 19, 2023 passed in M.C.O.P.No.44 of 2022 on the file of the 'Motor Accident Claims Tribunal No.1, Special District Court, Thiruvallur' ['Tribunal' for short], the appellants / claimants therein have preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties will hereinafter be referred to as per their rank in the Motor Claim Original Petition.

PETITIONERS' CASE

3. The case of the petitioners is that on February 11, 2022 at about 07.30 p.m., the deceased - Meena was riding pillion on the first respondent's motor cycle bearing Registration No. TN-11-AS-6975 on Nagari to Thirupathi road. The said motorcycle was driven by first respondent in a rash and negligent manner, lost his control and hit a pothole causing imbalance. Consequently, the deceased – Meena fell down and sustained grievous injuries. She was rushed to Nagari Government Hospital for first aid and then, to SVIMS Hospital Tiruvallur for treatment. Despite treatment, she succumbed to the injuries on the same day. The first respondent is the owner cum driver of the motor cycle. The second respondent and third respondents are third party insurer respectively of the said motorcycle. Hence all three respondents are jointly and severally liable to pay compensation to the petitioners. Accordingly, petitioners are seeking compensation of Rs.60,00,000/- from respondents.

RESPONDENTS' CASE

4. The first respondent remained *ex-parte* before the Tribunal.

5. The second respondent filed counter stating that the accident occurred only due to negligence of the deceased who was riding pillion on the first respondent's motorcycle in a careless manner without holding onto the bike properly. This caused her to fall when the first respondent's motorcycle hit a pothole. There was no negligence on the part of the first respondent. That apart, the policy issued by the second respondent is named as Standalone Motor Own Damage Policy for two-wheelers covering only damage to the insured motorcycle; it does not cover any damage to properties of third parties, or any injuries or death. The second respondent is not liable to pay any compensation and the petition is to be dismissed against the second respondent.

6. The third respondent filed counter stating that there is no insurance coverage by third respondent for the subject motor cycle covering the claim of the petitioners. This respondent issued Policy No. P0021300059/4113/123192, which is a policy bundled with Act Only Policy for five years and Own Damage Policy for one year for the subject motor cycle bearing Registration No.TN-11-AS-6975, both starting from 10.55 hours of September 15, 2020. The accident had occurred on February 11, 2022. Pillion riders are covered only under Own Damage

Policy. While the Own Damage Policy issued by third respondent had expired before the accident, the policy issued by second respondent was valid on the date of accident. Hence, the claim of the petitioners for the death of pillion rider is covered under the policy of second respondent alone and as such if at all any compensation is to be paid, it should be by the second respondent alone statutorily.

TRIBUNAL:

7. The Tribunal framed the following points :-

"*1. Whether the accident has happened due to the rash and negligent driving of the driver of the motorcycle bearing registration No.TN-11-AS-6975?*

2. Whether the petitioners are entitled to claim compensation for the accident? If so, from whom?

3. What is the quantum of compensation to be awarded?"

8. During trial, on the side of the petitioners, the first petitioner was examined as P.W.1, one Mr.Rahaman was examined as P.W.2 and Ex-P.1 to Ex-P.9 were marked. On the side of the respondents, the first respondent was examined as R.W.1, one Mrs.Vidya – Assistant Manager at second respondent / insurance company was examined as

R.W.2, one Mr.Mahesh Kumar was examined as R.W.3 and Ex-R.1 to Ex-R.5 were marked.

9. After considering the evidence and arguments on either side, the Tribunal concluded that the accident happened due to rash and negligent riding of the first respondent's motorcycle. Further, the Tribunal concluded that the first respondent / owner alone is liable to pay compensation. The claim petition was dismissed against the respondents 2 and 3. As regards compensation, considering the age, avocation and monthly income of the deceased, the Tribunal awarded a sum of Rs.19,31,704/- as compensation.

10. Feeling aggrieved by the Award passed by the Tribunal, the claimants have filed this Civil Miscellaneous Appeal.

ARGUMENTS:

11. Learned Senior Counsel appearing for the appellants / petitioners would submit that at the time of accident, the first respondent's vehicle was insured with the respondents 2 and 3. The second respondent issued Ex-R.3 – Insurance Policy as an Own Damage policy covering injuries to or death of pillion riders. Further, the third respondent issued Ex-R.5 – Insurance Policy which includes an Act Only Policy for a term of five years. The accident happened on February 11, 2022, and admittedly, both the policies were valid at the time of accident. He would invite the attention of this Court to Ex-R.5 and place emphasis on the word 'occupant' in the phrase 'occupant carried in the insured vehicle' under the Section II – LIABILITY TO THIRD PARTIES thereof to argue that occupant include pillion rider too. Thus, both Ex-R.3 and Ex-R.5 cover the death of the deceased who was riding pillion on first respondent's motorcycle. Therefore, both, respondents 2 and 3, are jointly and severally liable to pay compensation to the petitioners. The Tribunal failed to consider the said facts. Accordingly, he prayed to allow the Civil Miscellaneous Appeal and to direct respondents 2 and 3 to pay the Award amount.

12. Learned Counsel for the second respondent / Insurance Company would submit that the policy issued by second respondent vide Ex-R.3 – Insurance Policy is a Standalone Motor Own Damage Policy, which covers only the damage caused to the vehicle, and not any damage to properties of third party or any person injured or death, and hence, the second respondent is not liable to pay compensation to the petitioners. The Tribunal after considering the terms and conditions of Ex-R.3 - Insurance Policy, rightly dismissed the original petition against the third respondent. Hence, there is no need to interfere with the findings of the Tribunal in this regard. Accordingly, he prayed to dismiss the appeal.

13. Despite service of notice to the respondents 1 & 3 and their names being printed in the cause list, there is no representation on behalf of them.

DISCUSSION

14. This Court has considered the submissions made on either side and perused the materials available on record. Now there is no dispute with regard to the manner of accident. The question to be decided in this appeal is who bears the liability to pay the compensation to the petitioners.

15. The second respondent issued Ex-R.3 - Insurance Policy to the first respondent's motor vehicle bearing Registration No.TN-11-AS-6975. The policy being a Standalone Motor Own Damage Policy for two-wheelers, it covers only damage to the insured motorcycle; it does not cover any damage to properties of third parties, or injuries or death caused to anyone. Ex-R.3 entails no other liability. In other words, as per the Ex-R.3, the second respondent is liable to pay the compensation only when any damage occurs to the first respondent's vehicle and it does not cover the death of the deceased. Hence, the Tribunal was right in concluding that the second respondent is not liable to pay compensation.

16. Ex-R.5 - Insurance Policy is a bundle policy. While its Own Damage Policy covering pillion riders got expired on September 14, 2021 *i.e.,* before the accident, its Act Only Policy was in force on the date of accident. Now the question is whether a pillion rider is a third party or not. The current legal position is that, Indian Motor Tariff Endorsement No.18, which is to the effect that in Act Only Policy, the insured has to pay extra premium to cover the pillion rider. No such extra premium has been paid by the first respondent under Ex-R.5, extending the third respondent's liability to pillion rider / deceased. Hence, the third respondent is not liable to pay any compensation to the petitioners.

17. In this regard, it is pertinent to refer to the Judgment of the Hon'ble Supreme Court in ***Oriental Insurance Co. Ltd. -vs-***

Sudhakaran K.V., ***(2008) 7 SCC 428,*** wherein it has been observed as hereunder:

> *"25.The law which emerges from the said decisions, is : (i) the liability of the insurance company in a case of this nature is not extended to a pillion-rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion-rider; (iii) the pillion-rider in a two-wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."*

18. To be noted, Hon'ble Supreme Court referred the question as to whether a pillion rider is covered under third party insurance or not to a larger bench vide its Order dated August 25, 2022 made in ***Mohana Krishnan S. -vs- K. Balasubramaniyam***, Special Leave to Appeal (C) No. 3433 of 2020. However, the current legal position is that pillion rider is not covered under third party insurance unless an additional premium in this regard was paid.

19. Thus, both, Ex-R.3 and Ex-R.5 - Insurance Policies, do not cover the pillion rider. The deceased being a pillion rider can claim neither under own damage nor third party coverage. The Tribunal after elaborately discussing the legal position, has rightly come to the conclusion that the respondent 2 and 3 are not liable to pay the compensation to the petitioner and only, the first respondent is liable to pay the compensation. There is no need to interfere with the same.

20. As far as the quantum of compensation, at the time of accident, the deceased was 27 years as evident from Ex-P.4 – Post-mortem Report. The petitioners did not produce any documents to substantiate the monthly income of the deceased. Hence, the Tribunal by following the Judgment of this Court in ***Andal -vs- Avinav Kannan*** reported in ***2019 (1) TNMAC 54*** had taken Rs.9,510/- as notional income and by applying 40% increase for future prospects, deducting 1/3rd as his personal expenses, and applying the proper multiplier of 17 as per the Judgments of the Hon'ble Supreme Court in ***National Insurance Company Limited -vs- Pranay Sethi & Others [(2017) 16 SCC 680] and Sarla Verma -vs- Delhi Transport Corporation [(2009) 6 SCC 121]***, it arrived at Rs.18,10,704/- as compensation under the head of loss of dependency.

Further, it has awarded compensation under the non-conventional heads as per ***Pranay Sethi's Case*** (cited *supra*). Accordingly, it arrived at a sum of Rs.19,31,704/- as total compensation. The said quantum arrived at by the Tribunal needs no warrant of interference.

CONCLUSION

21. In the result, this Civil Miscellaneous Appeal is dismissed. In view of the facts and circumstances of this case, there shall be no order as to costs.

[J.N.B., J.] **[R.S.V., J.]**
29 / 01 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
av / tk

To

The Motor Accident Claims Tribunal No.1,
Special District Court, Thiruvallur.

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

av/tk

PRE-DELIVERY JUDGMENT MADE IN CMA NO.2093 OF 2023

29 / 01 / 2025