IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.2714 of 2025
and
C.M.P.No.23136 of 2025
and
C.M.P.No.26164 of 2025

United India Insurance Company Ltd.,
Silingi Building,
No.134, Greams Road, Chennai-6. … Appellant / 2nd Respondent

vs.

1.Gajraj @ Gajraj Katariaya

2.V.Nirmala … Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 08.11.2023 made in M.C.O.P.No.2199 of 2017 on the file of the Motor Accident Claims Tribunal / the V Court of Small Causes, Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondent : Mr.S.Ravi Kumar[R1]

JUDGMENT

Challenging the liability saddled upon the insurance company, this Civil Miscellaneous Appeal has been preferred against the Award dated 08.11.2023 made in M.C.O.P.No.2199 of 2017 on the file of the Motor

Accident Claims Tribunal / V Court of Small Causes, Chennai, the Insurance Company has preferred this Civil Miscellaneous Appeal.

2. Parties are indicated herein as per the litigative status and ranking before the Tribunal.

3. Case of the claimant is that on 18.12.2016 at about 15.15 Hrs., while the petitioner was travelling as a passenger in an autorickshaw bearing Reg.No.TN-07-AJ-3388 proceeding towards Vyasarpadi in front of New Bridge mouth, North down, Basin Bridge, Vyasarpadi, Chennai the driver of the Auto rickshaw drove the vehicle in a rash and negligent manner and in high speed hit behind the Motor Cycle bearing Reg.No.TN-05-BD-9964. Due to the said impact, Auto rickshaw turned Topsyturvy. The petitioner fell down and sustained crush injuries with skin loss over the left index finger, middle finger and multiple grievous injuries all over body. He was taken to Nichani's Hospital, Royapuram, Chennai and he took further treatment in other private hospital in Chennai. The driver of the Auto rickshaw is responsible for the accident. The owner of the auto rickshaw and its insurer / 2nd respondent are liable to pay compensation to the claimant herein.

4. The 1st respondent remained exparte before the Tribunal. The 2nd respondent would state that there is no valid insurance policy and the driver of the vehicle (auto rickshaw) had no valid and effective driving licence, no valid permit and F.C., at the relevant point of time. The Insurance Policy in No.0120033116P110067657 of the 1st respondent's vehicle, the policy is liability only policy and the passengers in the 1st respondent's vehicle (auto rickshaw) are not covered under the policy. No separate premium was paid by the 1st respondent to cover the passengers travelling in the Auto as mentioned supra and therefore, the 2nd respondent/Insurance Company is not liable to pay compensation to the petitioner.

5. It appears that no evidence was led in by the 2nd respondent/Insurance Company, the Tribunal by holding that the 2nd respondent has not proved any violation of policy condition by the 1st respondent and the liability was saddled upon the Insurance Company to pay compensation.

6. On behalf of the appellant/Insurance Company, an application is taken out under Order 41 Rule 27 CPC to receive the private vehicle policy No.0120033116P110067657 issued in the name of Smt.Nirmala /

1st respondent for the period from 28.10.2016 to 27.10.2017. R.C.Book in respect of auto rickshaw as an additional document.

7. On behalf of the 1st respondent/claimant, it was counteracted by filing counter that the insurer denied its policy on the ground of nature of the insurance policy. For the reasons best known to the insurer, no witness was examined and the insurance policy was not marked before the Tribunal. The learned counsel for the 1st respondent/Claimant would strongly object for receiving insurance policy R.C.Book of the vehicle bearing Reg.No.TN-07-AJ-3388. He would further contend that the petitioner has not stated any credible reasons as to why the documents were not produced before the Tribunal and sought for dismissal of the application.

8. Of course, additional evidence shall not be allowed in Appellate Court under three circumstances: (i) Where the trial Court refused to admit the evidence though it ought to have been admitted. (ii) Evidence was not available to the party despite the exercise of due diligence. (iii) Appellate Court required the additional evidence so as to enable it to pronounce better judgment or any other substantial cause of like nature.

9. No doubt, in the counter of the insurance company, it has been stated about the details of the policy in respect of the concerned Auto rickshaw. The claimant states that he travelled in the Auto at the relevant point of time and sustained serious injuries.

10. As per the counter details, the policy is liability only policy. As no oral or documentary evidence was led in on behalf of the Insurance Company, the Tribunal saddled the liability upon the Insurance Company. Marking of insurance policy is essential to determine the Insurance Company's liability. Therefore, in order to have an effective justice, the Civil Miscellaneous Petition in C.M.P.No.26164 of 2025 stands allowed and the documents are received.

11. In order to enable the Tribunal to permit the 2nd respondent/Insurance Company to led evidence, the award passed by the Tribunal stands set aside. Sequel to this, the Original Petition is remanded back to the concerned Tribunal and the Tribunal shall afford an opportunity to the Insurance Company to lead oral and documentary evidence and after hearing the arguments of both sides and pronounce the judgment in accordance with law preferably within a period of three months from the date of receipt of a copy of this Judgment.

12. In view of the above said narrative, this Civil Miscellaneous Appeal stands disposed of. No costs. Consequently, connected miscellaneous petition in C.M.P.No.23136 of 2025 stands closed.

04.11.2025

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
   V Court of Small Causes, Chennai.

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

R.KALAIMATHI, J.,

ssn

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