BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated	:	28.10.2025

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).Nos.718 & 767 of 2025
and
C.M.P.(MD).Nos.11418 and 12319 of 2025

C.M.A.(MD).No.718 of 2025

The Branch Manager
Cholamandalam MS General Insurance Co Ltd.,
Sivakasi CIE Office No.1252
Periyakaruppan Street.
Virudhunagar Main Road, Sivakasi
Virudhunagar District. ... Appellant/
2nd Respondent

Vs.

1.Tmt.V.Maheswari ... 1st Respondent/
1st Petitioner

2.Mr.P.Ramarajan ... 2nd Respondent/
1st Respondent

PRAYER : This Civil Miscellaneous Appeal has been filed under 173 of Motor Vehicles Act, 1988 to set aside the order in M.C.O.P.No.121 of 2021 dated 23.12.2022 on the file of the Motor Accident Claim Tribunal (Special Sub Judge) Dindigul.

For Appellant : Mr.N.Shyllappakalyan

For Respondents : Mr.H.Lakshmi shankar

C.M.A.(MD).No.767 of 2025

The Branch Manager
Cholamandalam MS General Insurance Co Ltd.,
Sivakasi CIE Office No.1252
Periyakaruppan Street.
Virudhunagar Main Road, Sivakasi
Virudhunagar District. ... Appellant/
2nd Respondent

Vs.

1.Minor.C.Kavibarathi ... 1st Respondent/
1st Petitioner

2.Mr.P.Ramarajan ... 2nd Respondent/
1st Respondent

PRAYER : This Civil Miscellaneous Appeal has been filed under 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment in M.C.O.P.No.120 of 2021 dated 23.12.2022 on the file of the Motor Accident Claim Tribunal (Special Sub Judge) Dindigul.

For Appellant : Mr.N.Shyllappakalyan

For Respondents : Mr.H.Lakshmi shankar

COMMON JUDGMENT

The insurance company, namely, the second respondent in M.C.O.P.Nos. 120 and 121 of 2021 on the file of the Motor Accident Claim Tribunal (Special Sub Judge) Dindigul have filed these civil miscellaneous appeals challenging the following award passed against them vide impugned award dated 23.12.2022 questioning their liability.

2.The claimant in M.C.O.P.No.120 of 2021, namely, Minor.C.Kavibarathi travelled as a pillion rider along with her grand mother on the two wheeler bearing registration No.TN-58-BZ-2769 which was ridden by her uncle Rajkumar, namely, brother of the father of the said Minor.C.Kavibarathi on 08.05.2020 at 02.00 pm., which met with accident on Dindigul to Kandhappakottai main road due to the rash and negligent act of the said Rajkumar and the said motor cycle hitting the milestone situated adjacent to the national highways. As a result, the minor child sustained injuries over her left leg and all over the body and she had undergone multiple surgeries and also she is unable to do her normal activities and therefore, she sought compensation of Rs.20,00,000/- by filing M.C.O.P.No.120 of 2021.

3.Similarly, the claimant in M.C.O.P.No.121 of 2021, namely, V.Maheswari filed the claim petition stating the above events as she also sustained injuries and admitted in the hospital and surgery was done in the right leg and also plate was fixed for the fracture of her rib bone and hence, she is unable to do her daily work. Therefore, she filed the M.C.O.P.No.121 of 2021, by claiming compensation of Rs.20,00,000/- by impleading the owner of the two wheeler as first respondent and insurance company as the second respondent.

4.The insurance company have filed the counter denying the liability and disputing the manner of the accident and the negligence on the part of the first respondent. The company specifically raised a question that the policy was “Act policy” and therefore, there was no coverage for pillion rider of the motor cycle and hence, they sought to dismiss the claim petition against the insurance company.

5.The learned Tribunal Judge after considering the evidence adduced on the side of the claimants P.W.1 to P.W.3 and perusing all the documents filed on either side and R.W.1's evidence and Ex.C1 and Ex.C2, granted the compensation of Rs.3,30,536/- to the claimants in M.C.O.P.No.120 of 2021 and Rs.2,71,932/- in M.C.O.P.No.121 of 2021, by passing the impugned common judgment dated 23.12.2022. Challenging the liability, the insurance company have filed these appeals before this Court.

6.**<u>Submission of the learned counsel for the appellant insurance company:</u>**

The learned counsel would submit that the insurance company disputed their liability. The learned counsel would submit that the deceased is aged about 9 years old female child and injured was the pillion riders of two wheeler bearing registration No.TN-58-BZ-2769 and the said vehicle was insured with the appellant insurance company. The said policy is a Act policy for the period from 21.02.2020 to 20.02.2021 and the said policy is named as bundle policy and hence, it did not cover the risk in respect of the an accident involving the pillion riders or occupant of the motor cycle. In the absence of any payment of additional premium to cover the pillion rider the liability could not mulcted and only in the case of comprehensive policy, the liability can be fixed upon the insurance company. He also placed the judgment of the Hon'ble Supreme Court reported in ***AIR 2013 SC 473, AIR 2006 SC 1576,*** Division Bench Judgment of this Court in ***C.M.A.No.2093 of 2023, C.M.A.(MD).No.392 of 2020***. He also submitted that as per Section 64(4) of the Insurance Act, IRDA circular issued by the IRDA is binding force. Therefore, on the basis of the judgment of the Hon'ble Supreme Court in ***Writ Petition Civil No.295 of 2012*** the IRDA issued circular dated 28.08.2018 and therefore, the bundle policy issued relating to the two wheeler involved in the accident did not cover the pillion riders. Therefore, he seeks to distinguish the judgment of this Court based on the IRDA circular dated 16.01.2009 and seeks to set aside the impugned judgment and fix the liability upon the owner of the two wheeler.

7.**Submission of the learned counsel for the claimant**

The learned counsel would submit that at the outset the submission of the learned counsel for the insurance company that the policy was not comprehensive is against the evidence of the own insurance officer who had been examined as R.W.1. The learned trial Judge in his judgment in paragraph No.(ix) clearly extracted the relevant provision of the evidence and hold that the insurance company is liable to pay the amount. He would also submit that on the basis of the policy produced before this Court and the evidence of R.W.1, there was no ambiguity relating to the coverage of the pillion rider. In the event of any discrepancy in respect of the terms of the policy, the Court has to leave in favour of the insured and to substantiate the said proposition, he relied the judgment of the Division Bench of this Court reported in ***2004 (2) TN MAC 31 (DB)***. Apart from that, he also relied the judgment of this Court wherein this Court made a detailed discussion about the coverage of the pillion rider in similar circumstances and has held that there was no necessity to pay the additional premium. Therefore, he seeks to confirm the award by affirming the finding of the learned tribunal Judge fixing the liability on the insurance company.

8.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and the precedents relied upon by them.

9.**Points for determination:**

Whether the learned tribunal Judge, has correct in fixing the liability upon the insurance company on the basis of the insurance certificate issued in respect of the two wheeler involved in the accident?

10.The learned counsel for the insurance company has admitted the proposition that in the case of the comprehensive policy, the insurance company has duty bound to pay the compensation in the case of the death of the pillon rider of the motor cycle. Even in the judgment of the Hon'ble Supreme Court ***AIR 2006 SC 1576***, namely, "***Tilak singh***", the Hon'ble Supreme Court has held that in the case of the "Act one policy", the liability of the insurance company to pay the compensation could not arise.

11.Now, there was no dispute about the issuance of policy. The nature of the policy according to the learned counsel for the insurance company is bundle policy. To clarify the said bundle policy, the R.W.1, manager of the insurance company was subjected to the cross examination. He specifically admitted that the policy was "package policy". He also admitted that there was no reference about the act only policy in the marked exhibits. Further, there was no express clause in the marked policy that the pillion riders cannot be termed as third party. Therefore, the learned trial Judge correctly held that the insurer made a misleading statement made on the basis of the division of the dates from 21.02.2019 to 2020 and 21.02.2019 to 20.02.2024. Even as per the circular issued by the IRDA dated 28.08.2018 on the basis of the judgment of the Hon'ble Supreme Court in W.P.Civil.No.295 of 2012, there was a clear indication to obtain the policy for five years. The present policy was also obtained for 5 years with payment of premium. Merely, there was a blank in the policy, it does not mean that the policy was not taken as a comprehensive policy. More particularly, the manager of the company gave the evidence that the policy was packaged policy.

12.It is unfortunate, the insurance company time to time change the name creating the ambiguity to disown the liability. Likewise, in this case, the name of the policy in one place stated as “bundle policy” and other place it is stated as “package Policy”. To clarify the same, fortunately, the learned counsel appearing for the claimant before the trial Court cross examined the manager and elicited the answer that the policy was comprehensive/package policy and therefore, the argument of the learned counsel for the insurance company that the policy is act policy is misconceived one and there was no legal force on the submission of the counsel that the bundle policy cannot be termed as “package policy”. Therefore, this Court finds no merit in the submission of the learned counsel for the appellant and these appeals lack merits and liable to be set aside.

13.Accordingly, these Civil Miscellaneous Appeals are dismissed by confirming the award passed in M.C.O.P.No. 120 of 2021 and M.C.O.P.No.121 of 2021 dated 23.12.2022 on the file of the Motor Accident Claim Tribunal (Special Sub Judge) Dindigul.

13.1.The insurance company is hereby directed to deposit the entire amount within a period of four weeks from the date of receipt of a copy of this Judgment, if not, deposited earlier.

28.10.2025

NCC Yes/No
Internet Yes/No
Index Yes/No
sbn

To

1.The Motor Accident Claims Tribunal,
Special Sub Judge,
Dindigul.

K.K.RAMAKRISHNAN.J,

sbn

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and
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