BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2025

CORAM:

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD)No.667 of 2025
and
C.M.P.(MD)No.10481 of 2025

M/s.United India Insurance Co. Ltd.,
Divisional Office,
Promenade Road,
Cantonment, Trichy,
Trichy District. ... Appellant/
3rd Respondent

Vs.

1.R.Selvaraj ... 1st Respondent/
Claimant

S.David Thomas Paneerselvam (Died) ... 1st Respondent

2.De.Jyaseeli ... Respondent/
2nd Respondent

Prayer : This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, against the fair and decreetal order dated 28.04.2018 made in M.C.O.P.No.598 of 2015 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tiruchirappalli.

For Appellant : Mr.B.Rajesh Saravanan

For Respondents : Mr.N.Sudhagar Nagaraj for R1

JUDGMENT

The Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award dated 28.04.2018 passed in M.C.O.P.No.598 of 2015 by the Special Subordinate Judge / Motor Accident Claims Tribunal, Tiruchirappalli.

2. The first respondent / claimant has filed a claim petition in M.C.O.P.No.598 of 2015, claiming compensation for the injuries sustained by him, in an accident that took place on 12.01.2014. The Tribunal has awarded a sum of Rs.1,88,740/- (Rupees One Lakh Eighty Eight Thousand Seven Hundred and Forty only) with interest at 7.5% per annum as compensation. Against which, the appellant / insurer has preferred this appeal.

3. A brief substance of the claim petition is as follows:

The first respondent was aged about 56 years and was working as a tailor and was earning Rs.15,000/- per month. On 12.01.2014, the first respondent as a pillion rider and one David Thomas Panneer Selvam as a rider were proceeding in a motorcycle bearing Registration No.TN-45-Y-1366 in Trichy to Chennai Bye-pass road from South to North direction near Sanjeevi Nagar opposite to ABT parcel service Trichy and at that time, the said David Thomas Panneer Selvam was riding the motorcycle in a rash and negligent manner without adhering traffic rules and dashed against the police barryguard and as a result, the first respondent sustained injuries. The first respondent was immediately taken to Atlas Hospital, Trichy. Due to the accidental injuries, he is not able to walk, stand, sit and squat. Hence, the claim petition was filed by the first respondent seeking compensation to the tune of Rs.3,00,000/-.

4. Since the rider was died, his wife added as second respondent. The Second respondent, owner of the vehicle, remained *ex-parte* before the Tribunal and the claim petition was opposed by the appellant.

5. A brief substance of the counter filed by the appellant is as follows:

The age, income and occupation and the manner of the accident of the first respondent are all denied. The accident was occurred only due to the rash and negligent driving of a car driver, who attempted to overtake the two wheeler rider. No extra premium was paid by the rider of the two wheeler to the pillion rider. The claim of compensation is excessive and exorbitant.

6. On the side of the first respondent, 2 witnesses were examined as P.W.1 and P.W.2 and 8 documents were marked as Ex.P.1 to Ex.P.8. On the side of the appellant, 1 witness was examined as R.W.1 and 1 document was marked as Ex.R.1.

7. The learned trial Judge, after considering the evidence, both oral and documentary, passed the impugned award dated 28.04.2018, holding that the two wheeler rider was responsible for the accident and directed the appellant to pay the award amount of Rs.1,88,740/- to the first respondent and then to recover the same from the second respondent. Aggrieved by the said award, the appellant has come up with the present appeal.

8. The learned counsel appearing for the appellant would submit that the Tribunal failed to consider the fact that the first respondent was travelling in the two wheeler as a pillion rider, which was not covered by the insurance policy issued by the appellant and that the Tribunal ought not to have applied pay and recovery theory as there is no liability on the appellant.

9. The learned counsel appearing for the first respondent would submit that the pillion rider should be treated as as third party contract of insurance and therefore, he is covered by the policy. Hence, he prayed for sustaining the award passed by the Tribunal.

10. I have carefully considered the submission made by the learned counsel on either side and perused the materials available on record.

11. Though the learned counsel appearing for the appellant would submit that they have not disputed the quantum of compensation awarded at by the Tribunal and only disputed the liability.

12. With regard to liability, in Ex.R.1, the heading itself shows that it is a Motorcycle / Scooter Liability Only Policy. It is clearly well settled by virtue of the clarificatory circular issued by the Insurance Regulatory and Development Authority dated 16.11.2009 that the passengers carried in a private vehicle and the persons travelling on a two wheeler are covered under the terms and conditions of the Standard Motor Package Policy.

13. Insurance Regulatory and Development Authority (IRDA) issued the circular with coverage of pillion rider under the "*standard Motor package Policy*":

> *Ref:* IRDA/NL/CIR/F&U/073/11/2009 November 16, 2009
>
> To
>
> CEOs of all General Insurance Companies
>
> *Re:* Liability of Insurance Companies in respect of Occupants of a Private Car and Pillion rider on a Two-Wheeler under Standard Motor Package Policy [also called Comprehensive Policy].
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> Insurers' attention is drawn to wordings of Section II (1)(ii) of Standard Motor Package Policy (also called Comprehensive Policy) for Private Car and Two-Wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:

Section II - Liability to Third Parties:

1. Subject to the limits of liabilities as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of—

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.

It is further brought to the attention of insurers that the above provisions are in line with the following Circulars earlier issued by the TAC on the subject:

(i) Circular M.V. No. 1 of 1978 - dated 18th March, 1978 [regarding occupants carried in Private Car] effective from 25th March, 1977.

(ii) MOT/GEN/10 dated 2nd June, 1986 [regarding Pillion Riders in a Two-Wheeler] effective from the date of the Circular.

The above Circulars make it clear that the insured's liability in respect of Occupant(s) carried in a Private Car and Pillion Rider carried on Two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular No. 066/IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide Circular No. 019/IRDA/NL/F&U/Oct-08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs.

All General Insurers are advised to adhere to the afore-mentioned Circulars and any non-compliance of the same would be viewed seriously by the Authority.

This is issued with the approve of Competent Authority.

Sd/- (Prabodh Chander)

Executive Director

14. After the above circulars, the standard Motor Package Policy itself covers pillion rider without any doubt. Further, during the course of the hearing of Delhi High Court in the case of ***Yashpal Luthra Vs. United Insurance Company*** reported in ***2011 ACJ 1415,*** IRDA sent further communication to all the insurance company, which reads as follows:

IRDA/NL/CIR/F&U/078/12/2009 3rd Dec. 2009.

To

All CEOs of All General Insurance Companies (except ECGC, AIC, Staff Health, Apollo)

Re: Liability of Insurance Companies in respect of Occupant of a Private Car and Pillion Rider in a Two-Wheeler under Standard Motor Package Policy (also called Comprehensive Policy).

Pursuant to the Order of the Delhi High Court dated 23.11.2009 in MAC APP No. 176/209 in the case of Yashpal Luthra v. United India, the Authority convened a meeting on November 26, 2009 of the CEOs of all the general insurance companies doing motor insurance business in the presence of the Counsel appearing on behalf of the Authority and the leaned amicus curie.

Based on the unanimous decision taken in the meeting by the representatives of the general insurance companies to comply with the IRDA circular dated 16th November, 2009 restating the position relating to the liability of all the general insurance companies doing motor insurance business in respect of the occupants in a Private Car and pillion rider on a Two-Wheeler under the Comprehensive/Package Policies which was communicated to the Court on the same day i.e. November 26, 2009 and the Court was pleased to pass the order (dt. 26.11.2009) received from the Court Master, Delhi High Court, is enclosed for your ready reference and adherence. In terms of the said order and the admitted liability of all the general insurance companies doing motor insurance business in respect of the occupants in a Private Car and pillion rider on a Two-Wheeler under the Comprehensive/Package Policies, you are advised to confirm to the Authority, strict compliance of the Circular dated 16th November, 2009 and orders dt.26.11.2009 of the High Court. Such compliance on your part would also involve:

(i) withdrawing the plea against such a contest wherever taken in the cases pending before the MACT, and issue appropriate instructions to their respective lawyers and the operating officers within 7 days.

(ii) with respect to all Appeals pending before the High Courts on this point, issuing instructions within 7 days to the respective operating officers and the Counsels to withdraw the contest on this ground which would require identification of the number of Appeals pending before the High Courts (whether filed by the Claimants or the insurers) on this issue within a period of 2 weeks and the contest on this ground being withdrawn within a period of four weeks thereafter.

(iii) with respect to the Appeals pending before the Hon'ble Supreme Court, informing, within a period of 7 days, their respective Advocates on record about the IRDA Circulars, for appropriate advice and action.

Your attention is also drawn to the discussions in the CEOs meeting on 26.11.2009, when it was reiterated that insurers must take immediate steps to collect statistics about accident claims on the above subject through a central point of reference decided by them as the same has to be communicated in due course to the Honourable High Court. You are, therefore, advised to take up the exercise of collecting and collating the information within a period of two months to ensure necessary & effective compliance of the order of the Court. The information may be centralized with the Secretariat of the General Insurance Council and also furnished to us.

The IRDA requires a written confirmation from you on the action taken by you in this regard.

This has the approval of the Competent Authority.

Sd/- (Prabodh Chander)
Executive Director

15. From the above reading of the circulars, it is clear that the argument of the learned counsel appearing for the appellant under the caption of "*Act policy*", is misconceived.

16.1. It is also well settled principle that IRDA regulations guidelines and circulars are binding on the insurance companies and the same has been reiterated by the Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd. v. Manubhai Dharmasinhbhai Gajera***, reported in ***2008 10 SCC 404*** and the relevant paragraph is as follows**:-**

> *"35. The Authority wants the insurance companies to offer a fair deal and all the terms and conditions of their offer must be transparent. There should not be any hidden agenda. Even they should not take recourse to "ticketing contract". When, however, the terms of the new product or revised product require the approval of the Authority,*

prima facie, the same would mean that they are fair and reasonable. The action on the part of the Authority is not in question. Regulations, guidelines and circulars are binding on the insurance companies."

16.2. Therefore, when the IRDA clearly demonstrated the standard Motor Policy which is also known as the comprehensive policy covering the liability to the two wheeler by giving the purposive interpretation to the third party to the policy which is legislative in nature and the same is binding on the insurance company Therefore, the argument of the learned counsel appearing for the appellant that there is requirement under the policy to make a separate premium cannot be accepted. Further, the said position was clarified in detailed manner by the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd., vs. Balakrishananand others*** reported in ***2013 1 SCC 731***.

17. When similar issues were raised with regard to the principle of pay and recover and the liability to pay compensation to the pillion rider in ***C.M.A.(MD)No.789 of 2021 dated 28.10.2024,*** the Hon'ble Division Bench of this Court, by referring various decisions, has observed as

follows;

> *"22. .... In the said circumstances, the direction of the learned trial Judge to pay and recover the compensation amount from the owner of the vehicle is sustainable. The said issue is already settled by the Hon'ble Three Judges Bench of the Supreme Court reported in* ***2004 ACJ (1)*** *and in number of subsequent judgments. If the rider of the two wheeler did not possess the driving licence, the insurance company must satisfy the award at the first instance and recover the same from the owner of the vehicle.*
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> *......*
>
> *26.In view of the above discussion on the various factual and legal aspects, the contention of the learned counsel for the appellant that without making any separate payment of premium for the pillion rider of the two wheeler, the direction of the learned Tribunal Judge to pay and recover is not correct cannot be accepted."*

18. Considering the above, this Court is not inclined to interfere the impugned judgment. Accordingly, this Civil Miscellaneous Appeal is **dismissed** and the award dated 28.04.2018 passed in M.C.O.P.No.598 of 2015 on the file of Motor Accident Claims Tribunal / Special Subordinate

Court, Tiruchirappalli, is confirmed. The appellant is directed to deposit the entire award amount with accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, if not already deposited. Thereafter, the appellant is permitted to recover the same from the second respondent. On such deposit being made, the first respondent is permitted to withdraw the said amount, with accrued interest and costs. Consequently, connected Miscellaneous Petition is closed. No costs.

21.07.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

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

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.K.RAMAKRISHNAN,J.

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Judgment made in
C.M.A.(MD)No.667 of 2025
and
C.M.P.(MD)No.10481 of 2025

Dated : 21.07.2025