(2012) 04 MAD CK 0055

In the Madras High Court

Case No : C.M.A. (MD) No. 249 of 2012

Veerakumar APPELLANT

Vs

Manohar and Bajaj Allianz General Insurance Company Limited RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Citation : (2012) 04 MAD CK 0055

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Advocate : S. Deenadhayalan, for the Appellant; RAS. Aandraj for R1 and Mr. S. Srinivasa Ragavan for R2, for the Respondent

Judgement

Honourable Mrs. Justice S. Vimala

1. Even in respect of comprehensive insurance policy, whether the insurance company can dispute its liability to pay compensation to a pillion rider

on the ground that no additional premium has been paid covering his risk, is the issue to be decided in this appeal. The appeal has been filed by the

pillion rider/claimant challenging the finding of the Tribunal on liability and compensation.

2. The appellant had been riding as a pillion rider in the vehicle belonging to the first respondent who was the owner cum driver of the vehicle

bearing registration No. TN49-M 0277. The vehicle was driven in a rash and negligent manner and hit against one Jayakumar, who was a

pedestrian. In the same accident the appellant also sustained injuries. He took treatment at Pattukottai Private Hospital. Alleging that he sustained

permanent disability and consequential loss of earning capacity, the appellant filed petition claiming a sum of Rs. 5,00,000/- as compensation.

3. The claim was resisted by the insurance company on the ground that;

a) the driver did not have a valid driving license

b) Additional premium had not been paid for the pillion rider and therefore, the insurance company is not liable to pay the compensation.

4. Before the Tribunal the injured/claimant has been examined as PW1 and the doctor who issued the disability certificate has been examined as

PW2. Exhibits PW1 to PW10 have been marked on the side of the injured/ claimant. On the side of the respondent the officer of the insurance

company has been examined as RW1 and EX.R1 to R3 have been marked. The Tribunal framed issues regarding negligence as well as the liability

of the insurance company to pay the compensation. With regard to the negligence, the Tribunal came to the conclusion that the accident took place

due to the rash and negligent driving of the vehicle by the first respondent. On the question of liability, the finding is that as there had been no extra

premium paid to cover the liability of the pillion rider, the insurance company is not liable to pay the compensation. The Tribunal while giving the

finding has relied upon Ex.R1-Insurance Policy, Ex.R2 - Motor Tariff Rules and Ex.R3 - the policy relating to the vehicle TN-69-Z 5261.

Challenging the findings of the Tribunal, the present appeal has been filed.

5. The learned counsel for the respondent insurance company fairly conceded that the question of paying additional premium in respect of pillion

rider would arise only in case of ""Act Policy"" and inasmuch as the policy filed in this case is a comprehensive policy, there is no need to pay any

additional premium to cover the liability of the pillion rider and therefore, the insurance company is liable to pay the compensation.

6. In view of the above submission of the learned counsel for the second respondent admitting the liability, the finding of the Tribunal that the

insurance company is not liable to pay the compensation, is set aside.

7. With regard to the quantum of compensation, the learned counsel for the respondent elaborately pointed out the details of compensation

awarded to the claimant under the heads of permanent disability, pain and sufferings, medical expenses etc., The learned counsel for the appellant

contended that still there is scope for enhancing the amount of compensation under the head of transport expenses, loss of enjoyment of amenities

and extra nourishment. Perusal of the order passed by the Tribunal reveals that the compensation awarded is fair and just. Hence, there is no

justification to enhance the quantum of compensation. In the result, the appeal is partly allowed. The finding of the Tribunal with regard to quantum

of compensation is confirmed and the finding with regard to liability is set aside. In view of the order passed by this Court, the compensation as

ordered by the tribunal shall be paid by the insurance company, with interest at the rate of 7.5% from the date of petition till the date of deposit

(excluding the period of 912 days as ordered in M.P. (MD). No. 1 of 2010 in CMA(MD) Sr. No. 11165 of 2010), within a period of eight

weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is entitled to withdraw the same. No costs.

