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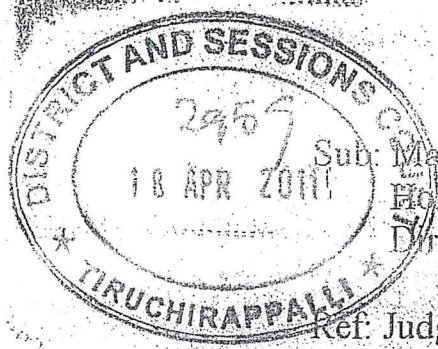
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ROC.NO.504-A/2011/F/MB

P. DIS. No.10/2011



A2



CIRCULAR

Sub: Madurai Bench of Madras High Court- Judgment of the Hon'ble High Court in CMA(MD) No.69 of 2010 dated 23.04.2010
Directions issued - Copy Communicated- Reg.

Ref: Judgment dated 23.04.2010 in CMA(MD) No.69 of 2010, Madurai Bench of the Madras High Court, Madurai.

A copy of the Judgment dated 23.04.2010 of the Hon'ble Madurai Bench of Madras High Court, in CMA.(MD) No.69 of 2010 is communicated for compliance. The Principal District Judge/District Judge, of the respective District/The Chief Judge, Puducherry/Principal Judge, City Civil Court, Madras /The Chief Judge, Court of Small Causes, Madras is hereby further directed to communicate a copy of the above Judgment to all the Motor Accident Claims Tribunals functioning in their respective jurisdiction

The receipt of this circular is to be acknowledged at once.

Madurai Bench of Madras High Court, Madurai
Dated:12.04.2011.

Sd/- N. Seshasayee
Registrar (Judl.)

True copy / Forwarded / By order

[Signature]
Asst. Registrar (Admn.)

Communicate
to all J.O.s. To:-
b
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1. All the Principal District Judges/District Judges.
2. The Chief Judge, Puducherry.
3. The Principal Judge, City Civil Court, Madras.
4. The Chief Judge, Small Cause Court, Madras.

Copy to

1. The Registrar General, High Court of Judicature, Madras-104.
2. The Registrar (Judl.) High Court of Judicature, Madras-104.
3. The Registrar (Admn.), Madurai Bench of Madras High Court, Madurai.
4. The Section Officer, 'F' Section, High Court of Judicature, Madras-104.

copy communicated to all the Judicial officers
in Tiruchirappalli District.

Sd/. B. Gokuldas,

District Court,
Tiruchirappalli.

Principal District Judge,
Tiruchirappalli.
/true copy / forwarded/

Dated: 30.04.2011.

To

B. Gokuldas
SA CHIEF ADMINISTRATIVE OFFICER.

- 1) The I Additional District Judge (PCR), The Presiding Officer, Labour Court, Additional District Judges, Mahila Court, Fast Track Court No. I & II, Tiruchirappalli.
- 2) All the Judicial Officers in Civil Unit of Tiruchirappalli District.
- 3) The Chief Judicial Magistrate, Tiruchirappalli with request to communicate this to all the Judicial Magistrates in Tiruchirappalli District.
- 4) The Secretary, District Legal Services Authority, Tiruchirappalli.

31/4/11

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21/4/11*

50A-A

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.04.2010
CORAM:
THE HONOURABLE MR. JUSTICE D. HARI PARANTHAMAN
C.M.A (MD) No. 69 of 2010

S. Jayanthi

Vs.

... Appellant/Claimant

- 1. D. Ramesh
- 2. The Branch Manager,
Oriental Insurance Company Limited,
Gopal Rao Library Building,
First Floor, Town Hall Road,
Kumbakonam.

*Balance riders/occupants
not covered by insurance
policy. Hence, the
respondents/respondents*

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 09.11.2009 made in M.C.O.P.No.666 of 2007, on the file of the Motor Accidents Claims Tribunal (Additional Sub Judge), Kumbakonam.

- For Appellant : Mr. R.A.S. Anandaraj
- For Respondent-1 : Mr. R. Maheswaran
- For Respondent-2 : Mr. K. Bhaskaran

JUDGMENT

The Pillion riders/occupants of the two-wheelers/cars, got injured/dead are put to untold sufferings in getting compensation provided under the Motor Vehicles Act, though they are covered by the package policy. It is not mandatory under the Motor Vehicles Act (shortly the 'Act') to cover the risk of pillion riders and occupants of the car. It is high-time that the Motor Vehicles Act be amended making it compulsory that the pillion riders and occupants of the car should also be covered under the Insurance policy, particularly, when there is vehicular explosion in our country, competing with the population explosion. In fact, the automobile industry have succeeded in its race. Now-a-days, even a common man and office-goers use two wheeler. What was considered to be luxurious item is now an essential item of life. The same applies to four wheelers also. Now villages of our country are linked with roads and variety of four wheelers are introduced day in and day out. But unfortunately, Motor Vehicles Act do not make it mandatory that the risk of the pillion riders and occupants of a car should be covered by the Insurance Policy. Since, the 'Act' do not provide for mandatory coverage, it is done by package policies. Even when there are package policies, the Insurance Companies take a plea that they are not bound to pay the compensation. This appeal is one among them and the Insurance Company was successful in persuading the Tribunal to direct the vehicle owner to pay the compensation.

2. It should be mandatory to cover the risk not only the pillion riders and occupants of the car but also the owners of the two-wheelers and four-wheelers by way of necessary amendments to the concerned enactments. It is not like in the olden days that only affluent people would own four-wheelers. Now-a-days, we do not find parking space to park the four-wheelers and owners of car themselves drive the car and do not appoint

drivers. Thus the risk of the owners of two-wheelers and four-wheelers should also be covered as they are also the road users.

3. In this case, the appellant was a pillion rider in the two-wheeler owned by the first respondent and the two wheeler was insured with the second respondent. Admittedly, a package policy was taken covering the risk of pillion rider. The two-wheeler involved in an accident on 12.07.2007 and the appellant got grievous injuries on her left hand and was admitted as inpatient from 12.07.2007 to 17.07.2007 and underwent surgery. Steel plates were fixed in her hand. The age of the injured at the time of accident was 28 years. She suffered 21.6% of permanent partial disability. However, when she claimed compensation in M.C.O.P No 666 of 2007 before the Motor Accidents Claims Tribunal, Kumbakonam, the Tribunal held that the second respondent is not liable to pay compensation, even when there was a package policy. The plea of the second respondent was found acceptance to the Tribunal and the Tribunal directed the first respondent to pay compensation of Rs.88,531/- as compensation as follows

S.No.	Description of heads	Amount In Rs.
1	Disability compensation	Rs. 42,000/-
2.	Attendant charges	Rs. 2,500/-
3.	Medical bills	Rs. 25,031/-
4.	Pain and suffering	Rs. 15,000/-
5	Extra nourishment	Rs. 3,000/-
6	Transport expenses	1,000/-
7	Total	Rs. 88,531/-

Aggrieved over the same, the appellant has preferred the present appeal, questioning the correctness of the award of the Tribunal.

4. In the appeal, the appellant seeks to fasten the liability on the Insurance Company, besides seeking enhancement of compensation.

5. Heard the learned counsel appearing on either side.

6. The learned counsel for the second respondent fairly submits that after the judgement of the Delhi High Court in Yashpal Luthra and another vs. United India Insurance Company Limited and others decided on 9.12.2009, the appellant/Insurance company issued a circular, dated 25.11.2009, advising all their officers to take steps to withdraw the appeals filed by the Insurance Company questioning the liability relating to Pillion riders and the said circular is incorporated at Paragraph 25 of the aforesaid judgement of the Delhi High Court and the same is extracted hereunder:

"25. Oriental Insurance Company Limited has also issued a circular, dated 25th November, 2009, to all their officers advising them as under:

"We have received circular No.IRD.NL/CIR/F&U/073/11/2009, dated 16.11.2009 from IRDA whereby it is confirmed that insurers liability in respect of occupant carried in a private Car and

Pillion Rider carried on 2 wheeler is covered under the standard Motor Package Policy. IRDA has further confirmed that vide various circulars issued after de-tariff of Motor, there has been no change in the scope of the standard covers. A copy of the Circular is enclosed for record and ready reference.

The terms of the cover as per the Motor Package Policy for Private Cars and 2 wheeler as given in the policy wording Section 2.1.(1) are very clear and are reconfirmed by the IRDA Circular. It is, therefore, advised to immediately review all cases where appeal has been filed on the ground that Insurer is not liable for occupants of Private Cars and Pillion Rider in a 2-wheeler under the Motor Package Policy. If the appeal is based solely on these grounds then it must be immediately withdrawn. If there are other grounds for filing appeal, then appeal be taken by the Regional Manager concerned.

Lastly, it must be ensured that our offices desist from filing appeals on the grounds of Pillion Rider or Occupants of Private Car not being covered under Motor Package Policies."

7. The learned counsel for the second respondent fairly submits that the second respondent is only liable to pay compensation in the case of injury suffered by the appellant as per package policy. However, from the Judgement of the Delhi High Court, it could be seen that hundreds and thousands of cases relating to pillion riders and occupants of the car is pending in Tribunals, High Courts and Supreme Court, wherein, the Insurance Companies are questioning their liability. Paragraphs 29 and 35 of the judgement of the Delhi High Court are extracted hereunder:

"29. All Motor Accident Claims Tribunals functioning in the National Capital Territory of Delhi will take note and ensure that no such plea is allowed to be put forward by any Insurance Company.

35. Copy of this judgment be also sent to all Motor Accident Claims Tribunals in NCT of Delhi."

8. The Delhi High Court directed the Motor Accident Claims Tribunal functioning in Delhi to ensure that no plea is put forward by the Insurance Company denying their liability in the case of package policy relating to pillion riders/occupants of the car. Considering the importance of the judgment, the Delhi High Court directed that a copy of the judgement be sent to all the Motor Accident Claims Tribunal in NCT of Delhi.

9. Then, the issue is relating to the quantum payable to the appellant. The doctor who gave the disability Certificate was examined as P.W.2 before the Tribunal. He deposed categorically that the appellant suffered 21.6% permanent partial disability. However, the Tribunal only awarded Rs.42,000/- without applying the multiplier method as contemplated under Second Schedule of the Motor Vehicles Act. The Supreme Court has held in various decisions that the multiplier method has to be applied in injury cases for computing compensation. But the learned counsel for the Insurance Company seriously objects for applying the multiplier method in this case. The objection of the learned counsel for the Insurance Company has no merit.

10. In this case, the appellant is a house wife. In the Judgement of the Division Bench in National Insurance Company vs. 1. Minor Deepika, represented by her guardian and next friend Ranganathan 2. Ranganathan reported in 2009-4-L.W.229, it is held that the monthly earnings of the house wife could be fixed at Rs.3,500/-. The learned counsel for the appellant states that he will be satisfied if Rs.3000/- is taken as monthly earnings of the injured. If Rs.3000/- is taken as the monthly earnings of the injured and rounding of the disability at 21%, by applying the multiplier as laid down in Smt.Sarla Verma's case reported in 2009 (2) TN MAC 1 (SC), the compensation works out to Rs.3,000 x 17 x 12 x 21/100=Rs.1,28,520/- as the multiplier is '17' as the appellant is aged 28 years. There is no dispute over the award under other heads and the same is confirmed and this Court fixes the compensation as follows:

S.No.	Description of heads	Amount in Rs.
1	Disability compensation	Rs. 1,28,520/-
2	Attendant charges	Rs. 2,500/-
3	Medical bills	Rs. 25,031/-
4	Pain and suffering	Rs. 15,000/-
5	Extra nourishment	Rs. 3,000/-
6	Transport expenses	1,000/-
7	Total	Rs.1,75,051/-

11. Accordingly, claimant is entitled to enhanced award amount of Rs.1,75,051/- with the same rate of interest as awarded by the Tribunal, from the date of the claim petition. The second respondent Insurance Company is directed to deposit the enhanced award amount in the Motor Accidents Claims Tribunal (Additional Sub-Court, Kumbakonam) to the credit of M.C.O.P.No.666 of 2007 within a period of six weeks from the date of receipt of a copy of this order and the claimant is permitted to withdraw the amount on paying the deficit court fee for the same.

12. While hearing this case, I am told that so many cases are pending involving pillion riders and occupants of the car all over Tamil Nadu. Therefore, the Tribunals in Tamil Nadu are also directed to ensure that the Insurance Companies are not allowed to put forward the plea denying their liability in the case of pillion riders and occupants of car, if they are covered by package policies. The Registry is directed to send a copy of this judgment to all the Motor Accident Claims Tribunal in Tamil Nadu to take suitable steps as stated above.

13. The Civil Miscellaneous Appeal is disposed of in the above terms. No costs.

Sd/-
Assistant Registrar (P & A)

/True copy/

S. Ven M 10-03-11
Sub Assistant Registrar (C.S)

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