BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
TIRUVALLUR AT POONAMALLEE.

(IN THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TIRUVALLUR AT POONAMALLEE

PRESENT: THIRU.S.MURUGESAN , M.Sc., B.L.,
II ADDITIONAL DISTRICT JUDGE
TIRUVALLUR AT POONAMALLEE

Dated, Wednesday the 4th day of August 2021

M.C.O.P. No. 384 / 2015

V.Parthasarathy , aged 64/2015, S/o Vijayarangam,
No.12, Tagore Street, Periyar Nagar ,
Kamarajar Nagar Post, Chennai- 600 071. ....Petitioner.

/ Vs /

1). Sivangnanam,
S/o Sambantham @ Sambathagirumani ,
No.2, Tagore Street, Kamarajar Nagar Post,
Chennai- 600 071.

2). The United India Insurance Company Limited,
No.48, Chandra Plaza, Arcot Road,
Saligramam, Chennai - 600 093 .... Respondents.

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This petition came up before this Tribunal for final hearing on 21.04.2021 in the presence of Thiru.Era.Arunachalam, Thiru.A.Elangovan and Tmt..K.Sujatha Learned Counsel for Petitioner and the 1st Respondent remained absent and set exparte and Thiru.R.K.Sethuraman , Learned Counsel for 2nd Respondent, upon hearing both sides and on perusal of oral and documentary evidence, having stood over for consideration till this day, this Tribunal delivered the following,

O R D E R

This Claim petition is filed by the Petitioner Under section 166 of Motor Vehicles Act and Rule 3 of Motor Accident Claims Tribunal Rules to get compensation for a sum of Rs.5,03,000/- for the injuries sustained by the Petitioner in the Road Traffic accident which was taken place on 21.08.2015.

2) THE AVERMENTS IN THE PETITION IN BRIEF IS AS FOLLOWS:-

The Case of the Petitioner is that on 21.08.2015 at about 10.30 p.m., the petitioner was travelling as pillion rider in Motor cycle bearing Registration Number. TN-20-AA-5659 belonging to the 1st Respondent driven by 1st Respondent by himself in a rash and negligent manner, came in high speed on the C.T.H.Road, from East towards West, while he was going near Thirumullaivoyal Police station, the rider of Motor cycle lost its control, dashed against the E.B.Post on the left side of the road and caused the accident. As a result the petitioner sustained multiple and grievous injuries. The accident happened due to the rash and negligent driving of the 1st Respondent Motor cycle driver . Hence the Claim petition.

3) THE AVERMENTS IN THE COUNTER FILED BY THE 2nd RESPONDENT IN BRIEF IS AS FOLLOWS:-

1). The Respondent does not admit any of the averments of the petitioner set out on his petition except those that are specifically admitted herein and the petitioner should prove the same with proper evidence.

2). This respondent submits that they have not received any information as regards the accident from the 1st respondent nor the respondent had chosen to appear before this court. Hence, this respondent filing this counter on the basis of available information.

3. The respondent submits this respondent is entitled to contest the case on all grounds available to the 1st Respondent u/s 170 M.V.Act and this respondent has already made a party to these proceedings, no fresh impleading of this respondent is contemplated under section 170 of M.V.Act is necessary.

4. The respondent denied their liability as the policy insured in the name of 1st respondent was only an Act Policy and it does not cover pillion rider and the insurance company is not liable to indemnify the owner as per the terms and condition of policy .

5. This respondent denied the manner of accident. It is learnt from investigation that there was no negligence on the part of the 1st respondent vehicle driver . The petitioner as a pillion rider failed to take care of himself, he fell down and sustained injuries The allegation that the rider lost his balance are false and the petitioner was at fault at the time of accident. Hence the petitioner for his own fault cannot maintain the above claim petition.

6. The respondent submits that on any event the petitioner as a pillion rider was also guilty for the act of contributory negligence since he failed to take care and if at all any award is passed in the claim petition, a greater percentage has to be apportioned on the part of him.

7. The respondent submits that the petitioner should prove the nature of injuries, the period of medical treatment taken by him and medical expenses incurred with relevant medical records.

8. The respondent submits the petitioner should prove the vehicular documents of motorcycle like insurance policy, R.C.book driving license before claiming compensation.

9. The respondent learnt that the rider of motor cycle was not having valid and effective driving license to drive the vehicle at the time of accident and this respondent is not liable to indemnify the owner of the said vehicle under contract as he has violated the terms and conditions of policy.

10. The claim of compensation is high and excessive and prayed to dismiss the claim petition .

4) On the above pleadings the following points were raised?

1) Whether the accident was taken place due to the rash and negligent driving of Driver of 1st Respondent motor cycle bearing Registration No. TN-20-AA-5659 ?

2). Whether the Respondents are liable to pay compensation to the Petitioner?

3). Whether the Petitioner is entitled to claim compensation? If so what is the quantum **?** from whom?

4). To what other relief the petitioner is entitled ?

5) In this case, on the side of Petitioner , the petitioner examined himself as PW1 and marked Ex.P1 to Ex.P9. On the side of Respondents RW1 was examined and Ex.R1 was marked . The petition u/s 170 M.V.Act petition filed by the 2nd Respondent to contest the claim on all grounds and the same was allowed .

The First Information Report (F.I.R) is marked as Ex.P1 .The Accident Register copy is Ex.P2 . Discharge summary is Ex.P3 Medical Bills for Rs. 1,69,618/- is Ex.P4. Scan report is Ex.P5. Driving license is Ex.P6. Copy of Bank Pass Book of Petitioner is Ex.P7. Insurance Policy copy of 1st Respondent is Ex.P8. Disability certificate issued by 1Medical Board is marked as Ex.P9. The copy of Insurance Policy of 1st Respondent is marked as Ex.R1.

6). Point No.1:-

The case of the petitioner is that on 21.08.2015 at about 10.30. P.M the petitioner was travelling as a pillion rider in Motor cycle bearing Registration Number. TN-20-AA-5659 driven by 1st respondent in a rash and negligent manner, in high speed on the C.T.H.Road, from East towards West, while he was going near Thirumullaivoyal Police station the rider of Motorcycle lost his control, dashed against the Electricity Board Post on the left side of the road and caused the accident,as a result, the petitioner sustained grievous injuries .

The accident was reported by one Tr.Prabhakaran before the Poonamallee Traffic Investigation Police and F.I.R was registered in Cr.No.876/PNE/2015 u/s 279,338 IPC (2 counts) . F.I.R is marked as Ex.P1. Immediately after the accident, the petitioner was taken to Nila Hospital and admitted there. The injuries caused to the petitioner in a Road Traffic Accident. The details of the accident was clearly narrated in the Accident Register Ex.P2.

7) According to the Learned counsel for the petitioner, the accident occurred only due to the rash and negligent driving of the driver of Motor cycle. The petitioner travelled as a pillion ride in the 1st Respondent Motor cycle. Since the 1st Respondent driver was not cautiously and carefully drove the motor cycle, hit against the Electricity B oard Post kept on the road side and as a result the petitioner sustained severe injuries

8) Per contra, the Learned counsel for the 2nd respondent would argue that there was no mistake and negligence on the part of the rider of motor cycle bearing Regn.No. TN-20-AA-5659 and he was proceeding on C.T.H. Road in a cautious and careful manner. But the petitioner as a pillion rider failed to take care and he fell down and sustained injuries.

10). Heard both sides. Entire records perused.

11) The documents Ex.P1 and Ex.P2, reveal the manner of the accident. PW1/Petitioner in his cross examination would depose that when he was travelling as a pillion rider in a 1st Respondent Motor cycle , the driver of the vehicle hit against the Electricity Board Post and as such he fell down .He sustained head injuries .Ex.P1 and Ex.P2 strengthened the evidence of PW1.

It is significant to note that the 1st Respondent was set exparte and a petition u/s 170 Motor vehicle Act filed by the 2nd respondent and contested the case. The manner of the accident though denied by the 2nd respondent .

Nothing brought before this court to disbelieve the evidence of PW1. Moreover, no rebuttal evidence in support of the 2nd Respondent's pleading was let in as stated in counter statement. Hence the evidence of Pw 1 , Ex.P1 and Ex.P2 are most enough to conclude that the accident was caused only on account of rash and negligent driving of the 1st Respondent two wheeler's driver . Point No.1 is answered in favour of the petitioner accordingly.

12) Whether the Petitioner being a pillion rider is entitled to get compensation for the injuries sustained by him from the 2nd Respondent ,who is the Insurer of the 1st Respondent.?

No doubt ,the 1st Respondent vehicle was injured with the 2nd Respondent. Ex.R1 is the Policy of the Insurance of the 1st Respondent Motor cycle.

13) According to the Learned counsel for 2nd Respondent , no doubt , the Insurance policy was in force on the date of accident for the Motor cycle belongs to the 1st Respondent. The period of insurance covers from 0.00 hours 09.07.2015 to midnight of 08.07.2016. The accident was happened on 21.08.2015 .The Policy taken for the 1st Respondent vehicle is a liability only Policy. The premium is not paid for the pillion rider as per the Indian Motor Tariff Rules, Moreover, in Ex.R1 is only covering a 3rd party in the event of any accident. The petitioner was travelled only as a pillion rider. Hence the Insurance company 2nd respondent is not liable to indemnify the owner of the vehicle.

14) On the other hand, the Learned counsel for the petitioner relied on the Judgment reported in 2008 ACJ.785 in Rameshchand Tripathi ..Vs..Lilly Joshi delivered by the Hon'ble High court of Kerala and contended that " a Notification issued by the Tariff Advisory Committee applicable w.e.f 25.03.1977 was not brought to the notice anywhere. Moreover the Insurance company did not follow the Notification n Para 9 of the judgment . It is stated that " the Insurance company did not disclose the existence of the said notification.

In Premsingh case, it was recorded as under, " We, however, need not go into the question .We find that compensation in respect of the pillion rider, was considered by the Tariff Advisory Committee and it was decided that death of or bodily injury to any person including person conveyed in or on the motor cycle would be covered provided , such person is not carried for hire or reward.''.

These instruction were made effective w.e.f. 25.03.1977. All existing policies should be deemed to incorporate this amendment automatically irrespective of the fact whether it is an "Act Policy" or a "Comprehensive Policy'

In this view of the mater, we hold that the pillion rider is covered under the Act policy. Insurance company is liable to indemnify the insured. The Notification clearly mandates that death or bodily injury to a pillion rider would be at par with a claim of a third party.

15) In spite of the Judgment the instruction not disclosed by 2nd respondent, Insurance company. He further contended that the Pillion rider i.e., the petitioner is covered by the Policy . Therefore the 1st Respondent and the 2nd Respondent are jointly and severally liable to pay the compensation to the Petitioner.

But however on perusal of Judgment relied on by the learned counsel for the petitioner reported in **2018 ACJ 781** , Wherein it was mentioned that the Hon'ble Supreme Court held that "a Pillion rider would not be a 3rd party and therefore, unless a specific premium was paid in respect of the Injury or death to a pillion rider on a two wheeler , Scooter, insurance company would not be liable to satisfy the award".

Now let us see the types of policies .

Generally, Policies are two types of Policies 1) is Liability only Policy and 2)ne is Package Policy. .

1) Liability only Policy: This covers Third party liability for bodily injury and or death and property damage. Personal accident cover for owner- driver is also included.

2) Package Policy : This covers loss or damage to the vehicle insured in addition to (i) above.

Restricting the scope of cover under Section-I (Loss of damage to the vehicle insured) of the Package policy without any reduction in Tariff rates is permitted. Excepting this no alteration or extension of any of the covers, Terms, conditions, Exclusions etc if any of the Policies. Endorsements laid down in this tariff is permitted without prior approval of the TAC.

The Learned counsel for the 2nd Respondent relied on the Judgment delivered by Hon'ble High court of Madras in CMA. 2696 of 2018 and stated that the Insurance company was exonerating from its liability , because the policy is only Act Policy and the Pillion rider would not cover the risk. . Since, there was no premium paid for him .

Similarly to support his contention, he relied another Judgment in **2020 TANMAC 417 - DB** our Hon'ble High court of Madras held that " in the absence of additional premium under IMT , the Insurer held not liable to pay the compensation to indemnify the insured".

Ex.R1 reveals that the 1st Respondent has not paid any additional premium for the Pillion rider. The citation reported in **2018 ACJ 781** is totally against the claim of the petitioner.

As already discussed Supra, the policy under Ex,.R1 is only Act Policy. .

Now it is to be seen that the pillion rider will be treated as 3rd party .

16) It is a settled proposition of law as far as the offending vehicle is concerned , in respect of liability policy or comprehensive policy it, certainly , does not cover the risk of 'gratuitous passenger'.

One of the condition stipulated in the Policy condition that it does not cover the use of carrying person for hire or reward.

17) The contention of the learned counsel for the petitioner is that the petitioner was travelled as a Pillion rider , he was not carrying by the 1st respondent vehicle for hire or reward. Therefore he cannot be treated as gratuitous passenger .But the perusal of the Ex.R1, it reveals that it is the liability Policy.

18) Now let us see Whether the petitioner can be treated as a 3rd party.

19) The 3rd party means a person unconnected to the Insurer or insured, the pillion rider is in a two wheeler is not for hire or reward treated to be a gratuitous passenger. The petitioner was offered accommodation to travel as a pillion rider by the owner or driver of the Two wheeler explicitly. Therefore the occupier for whom no premium is paid to cover risk, not covered under the insurance policy.

20) On perusal of Insurance Policy Ex.R1, it indicates no additional premium collected to cover risk of the pillion rider. Mere description in the Insurance policy with seating capacity of the Two wheeler, it does not include that the premium paid for the vehicle covered for Pillion rider also. If an additional premium is paid for the pillion rider also exclusively or by means of a comprehensive policy Then the Insurer is directed to indemnify the insured as per the condition of the Insurance Policy .

21) It is well established that the accident was happened and the petitioner sustained injuries is not denied. Since there is no extra premium paid for the pillion rider. He will not be covered by the policy. The petitioner traveled in 1st respondent vehicle as pillion rider and in view of the elaborate discussion, the petitioneis to be treated as a 'gratuitous passenger''. Therefore the 2nd respondent insurance company is exonerated from paying compensation to the 1st respondent.

22) The petitioner admitted in the Nila hospital . Immediately after the accident from Ex.P2 he was taken treatment in the hospital from 22.08.2015 to 29.08.2015. He was given conservative management. The discharge summary reveals the medical treatment taken by the petitioner marked as Ex.P3.

23) Ex.P5 is Scan report. P.W1/ injured would submit that his occupation was fitting worker. He has earned Rs.10,000/- per month. i.e., he is doing a self employed person. No documents has been produced by him to prove his income. Therefore his income is notionally fixed at Rs.6,000/- per month.

24) Due to the injuries he would have lost his employment for 3 months. Therefore, a sum of (6000x3months) Rs.18,000/- is awarded for the Loss of income for 3 months .

25) Besides our Hon'ble Supreme Court in his Judgment reported in R.D.Hattangadi Vs. Pest Control (India) Pvt.Ltd., and others, **1995(1) SCC 551** was pleased to issue guidelines how to arrive it while fixing the damages under the head of pecuniary and on-Pecuniary damages. .

26) The Petitioner would submit that on account of the injuries sustained in the accident he suffered disablement . To ascertain disability he was directed to appear before the District Medical Board. After assessing the injuries and other treatment, the Medical board assessed the disability of the petitioner at 25%. The disability certificate is marked as Ex.P9.

27) The date of accident i.e., 21.08.2015 was taken into consideration and based on that Rs.3,500/- is fixed for 1% of disability. Accordingly for 25% of disability (3500x25%) a sum of R.87,500/- is awarded to the disability.

28) Immediately after the accident the petitioner was taken to Nila Hospital For which the expenses for Transport would have met out by the petitioner . Hence for transport to hospital a sum of Rs.7,000/- is awarded as Transport Expenses .

29) The petitioner was admitted in the hospital for one week and discharged . For the healing of the wound, the petitioner would have consumed better and nutritious food .Therefore a sum of Rs.10,000/- is awarded for Extra nourishment . During the treatment in the hospital a inpatient and outpatient he was aided by an attender and therefore a sum of Rs.4,500/-is awarded as Attender Charge .

30) In the said accident , the petitioner's clothes and articles would have damaged. . Therefore, a sum of Rs.1,000/- is awarded for Loss of damage for clothes and articles.

31) The petitioner was admitted in the hospital for one week. He was advised to take eptoin tablets . Therefore the petitioner would have suffered a great pain and sufferings though he was treated conservatively . His suffering cannot be compensated by any means .However awarding a amount may at least satisfy him in the aspect .Hence for Pain and sufferings a sum of Rs.20,000/- is awarded .

32) A petitioner could not act as before due to the injuries sustained in the Road traffic accident. Taking into consideration of all the above aspects a sum of Rs.15,000/- is awarded for the Loss of happiness and amenities.

33) Before determining the compensation this Tribunal must take into consideration of the facts and fix the compensation in a just and proper manner. Our **Hon'ble Supreme Court of India in 2009 (6) SCC 121** in **Nagappa Vs. Guruthayal Singh and another** was pleased to observe that

> **"Thereafter Section 168 empowers the claim Tribunal make an award determining the amount of compensation which appears to it to be ''just". Therefore the only requirements for determining the compensation is that it must be " Just ". There is no other limitation or restriction on its power for awarding Just compensation".**

34). It has been clearly discussed supra . The 2nd Respondent is exonerated from his liability to indemnify the 1st Respondent .Therefore a Pay and recover could not be ordered. In view of this, the petitioner is entitled to claim the compensation from the 1st Respondent only .

35) During the treatment in the hospital as inpatient and outpatient the petitioner spent a sum of Rs.1,69,618/- and the petitioner is entitled for the said amount as such as determined by this tribunal . Hence, the medical expenses for Rs.1,69,618/- is awarded as such.

36) In view of the said analysis, the compensation to be payable is tabulated as follows.

Sl.no	Heads	Compensation Amount in Rs.
1	Loss of Income for 3 months (6000x3)	18,000/-
2	Transport Expenses	7,000/-
3	Loss of Damage for clothes and articles	1,000/-
4	Loss of happiness and amenities	15,000/
5	Attender charges	4,500/-
6	Extra Nourishment	10,000/-
7	Disability fixed @ Rs.3,500/- for 1% and for 25% (3500x25%) as per Disability Certificate issued by Medical Board	87,500/-
8	Medical Bills	1,69,618/-
9	Pain and Sufferings	20,000/
	Total	3,32,618/

The Total award amount Rs.3,32,618/- is rounded off to Rs.3,32,620/- (Rupees Three Lakhs Thirty Two Thousand , Six hundred and twenty only) . Point No.. 3 are answered accordingly.

37) POINT No. 4:-

In view of the findings given in Point Nos. 1 to 3 the Petitioner is not entitled to any other relief.

38) In view of the above discussion, this Tribunal is awarding a sum of Rs.3,32,620/- (Rupees Three Lakhs Thirty Two Thousand , Six hundred and twenty only) to be payable by the 1st respondent to the Petitioner with 7.5% interest per month from the date of numbering of the petition till the date of realization .

39) . The said amount to be deposited in the following Account.

Sl.No.	Particulars	Remarks
1	M.C.O.P.Number	M.C.O.P. 384/2015
2	On the file of (Claim Tribunal Name)	II Additional District and Sessions Court, Tiruvallur at Poonamallee
3	Date of Award	04.08.2021
4	Total Compensation Amount	Rs.3,32,620/-
5	Income Tax Deduction at source	--
6	Bank Transaction Reference No. Unique Transaction Reference (UTR)No.	Indian Bank, Poonamallee Branch Account No. 6522928919 IFSC Code : IDIB000P046

40) In the result, this Petition is partly allowed with costs.

2) That the 1st Respondent is liable to pay the award amount to the Petitioner for a sum of Rs.3,32,620/- (Rupees Three Lakhs Thirty Two Thousand , Six hundred and twenty only) towards compensation with costs and accrued interest thereon at 7.5% per annum from the date of numbering of the petition (i.e) 04.12.2015 till the date of realization .

The 2nd Respondent is exonerated from its liability to indemnify the 1st Respondent .Therefore a Pay and recover could not be ordered. In view of this, the petitioner is entitled to claim the compensation from the 1st Respondent only .

3) That the 1st Respondent is directed to deposit the Award amount to the credit of II Additional District and Sessions Court, Tiruvallur at Poonamallee, (i.e) Indian Bank Account No. 6522928919 (IFSC Code:IDIB000P046,) directly by NEFT or RTGS within a period of two months from today under intimation to this Tribunal .

4) On such deposit, the Petitioner is permitted to withdraw the amount on filing a proper petition for withdrawal excluding Advocate fees and Bank Charges due and the amounts shall be transferred to the Account of Petitioner's Bank Account No. 935510645 Indian Bank , Washermanpet, Thiruvottiyur High Road, Chennai through NEFT or RTGS.

5) The Court fee for the award amount is Rs.2,698.50. Refund excess court fee as per rules. Advocate fee is fixed at Rs.9,652/- No Interest for the default period as per the orders if any.

Dictated to the Steno-typist, typed by her in the computer, corrected and pronounced by me in the open court on this 4th day of August 2021 .

Sd/- xxxxxx, 04.08.2021

II Additional District and Sessions Judge,
Tiruvallur at Poonamallee

Petitioners side Witnesses:-

PW.1 – Thiru.Parthasarathy (Petitioner)

Petitioners side Exhibits:-

Ex.P1 – First Information Report (F.I.R)

Ex.P2 – Accident Register copy

Ex.P3 – Discharge summary

Ex.P4 – Medical Bills for Rs. 1,69,618/-

Ex.P5 – Scan report

Ex.P6 – Driving License of 1st respondent

Ex.P7 – Copy of Bank Pass Book of Petitioner

Ex.P8 – Insurance Policy copy of 1st Respondent

Ex.P9- Disability certificate issued by Medical Board.

Respondents side Witnesses:-

RW.1 – Thiru.Narasimman

Respondents side Exhibits :-

Ex.R1 – Insurance Policy copy of 1st Respondent

Sd/- xxxxxx, 04.08.2021

II Additional District and Sessions Judge,
Tiruvallur at Poonamallee

/ True Copy /