

**(2014) 11 MAD CK 0428**

**Madras High Court (Madurai Bench)**

**Case No:** Civil Miscellaneous Appeal No. 1099 of 2004 and C.M.P. No. 6403 of 2004

United India Insurance Company  
Limited

APPELLANT

Vs

Dhayammal

RESPONDENT

**Date of Decision:** Nov. 11, 2014

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 163(A)

**Hon'ble Judges:** S. Vimala, J

**Bench:** Single Bench

**Judgement**

S. Vimala, J.

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the liability as well as the quantum of compensation awarded in M.C.O.P.No. 50 of 2003, dated 25.11.2003 by the Tribunal.

2. The injured Dhayammal, aged 44 years, doing milk vending business, earning a sum of Rs. 3,000/- per month, met with an accident that took place on 02.10.2002 and suffered multiple injuries in respect of which she claimed a sum of Rs. 3,50,000/- as compensation.

3. The Insurance Company disputed the claim on the ground that the accident took place only on account of the negligence of the driver of the vehicle in which the injured was travelling and that there was no insurance at all covering the vehicle at the time of accident. Further contention of the Insurance Company was that the vehicle was only covered by Act policy under which there is no liability to satisfy the claim made by the pillion rider.

4. So far as the quantum of compensation is concerned, the Tribunal awarded a sum of Rs. 2,01,000/- under the following break up details:

5. So far as liability is concerned, relying upon the decision reported in [Oriental Insurance Company Limited, Bangalore Vs. Minaxi and Others](#), wherein it was held that the term "any person" covers the pillion rider and third party risk includes the risk of pillion rider also and, the Tribunal gave a finding that the Insurance Company is liable to pay compensation.

6. These findings are under challenge in this appeal.

7. The contention of the learned counsel for the Insurance Company is that the claim of the petitioner would be covered only under Section 163 (A) of the Motor Vehicles Act and hence, the Insurance Company ought not to have been directed to pay compensation as the policy did not cover the pillion rider.

8. It is not open to the Insurance Company to contend so in the absence of filing a copy of the policy. When the best evidence was available with the Insurance Company and when that the best evidence was not made available to the Court, it is not open to them to contend so. Therefore, the contention that there is no liability to pay compensation cannot be accepted in the absence of production of insurance policy.

9. So far as the quantum of compensation is concerned, the break up details as given above would clearly go to show that the compensation awarded is just and reasonable and it cannot be stated to be excessive. The Tribunal has relied upon the evidence of P.W.2 Dr. Rajendran for the purpose of assessment of disability. Accordingly to medical evidence, there was a fracture in the left knee, leading to restriction in the movement to the extent of 60x which caused serious impact upon the earning capacity of the claimant.

10. Considering the nature of the disability and the impact of the disability upon the earning capacity of the claimant, the compensation awarded by the Tribunal cannot be stated to be excessive. Therefore, the contention that the compensation awarded is excessive stands to no reason. Hence, the appeal has no merits and accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

11. It is represented that the entire amount has already been deposited by the Insurance Company. The claimant is at liberty to withdraw the same.