

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.09.2017

Pronounced on: 01.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 556 of 2016

Divisional Manager
M/s. The New India Assurance Company Ltd
Nellikuppam Branch
No.14, Main Road
Nellikuppam – 607 105

.. Appellant

Versus

1. Mrs. Kasthuri
2. Minor. Parthasarathy
3. Minor. Purusothaman
(Minor respondents 3 and 4 are
represented by their mother 1st
respondent)
4. Ethirajulu
Poongotai (died)

.. Respondents

Appeal filed under Section 173 of The Motor Vehicles Act against the Judgment and Decree dated 04.08.2015 passed in MCOP No. 534 of 2012 on the file of Motor Accident Claims Tribunal/Principal District Judge, Cuddalore.

For Appellant	:	Mr. G. Udayasankar
For Respondent	:	Mr. R. Muralidharan

JUDGMENT

(Judgment of the Court was delivered by **R. SUBBIAH, J**)

This appeal is filed by the Appellant – Insurance company questioning the correctness of the decree and judgment 04.08.2015 passed in MCOP No. 534 of 2012 on the file of Motor Accident Claims Tribunal/Principal District Judge, Cuddalore in so far as it relates to fastening liability on their part to pay the

compensation amount to the respondents/claimants.

2. The respondents/claimants are wife, children, father and mother of the deceased Sridharan. They have filed MCOP No. 534 of 2012 before the Motor Accidents Claims Tribunal, Cuddalore contending that on 14.01.2012, at about 6.30 p.m. when the deceased Sridharan was riding his two wheeler – TVS Victor Motor cycle bearing Registration No. TN 31 D 9745 at Palur to Cuddalore Main Road, a big tree was lying across the road near Kuchipalayam Iyyanar Temple due to the cyclone that hit the Cuddalore District on 29.12.2011. The deceased, without noticing the tree lying across the road, hit the branch of the tree lying on the road and fell down. Immediately, the deceased was admitted in Government Hospital, Cuddalore, where, after giving first aid, he was referred to MIOT Hospital, Chennai for better treatment. However, even before he could reach the private hospital, he died. On the death of the deceased, the claimants have filed the claim petition claiming a total compensation of Rs.9,15,000/- as compensation. It is the case of the claimants that the vehicle driven by the deceased was insured with the appellant/Insurance Company and therefore, for the death of the deceased, the appellant Insurance Company is liable to pay the compensation.

3. Resisting the claim petition, the Insurance Company has filed a counter affidavit before the Tribunal contending that the application filed by the claimants under 163-A of The Motor Vehicles Act is not maintainable. It was also contended that the vehicle in question was not insured with the appellant Insurance Company. According to the Insurance Company, the deceased died due to his own

liability.

4. In order to prove the averments made in the claim petition, the first claimant examined herself as PW1 and one Venkatachalapathy, an eye witness to the accident, was examined as PW2 besides Exs. P1 to P9 were marked. On behalf of the Appellant-Insurance company, neither a witness was examined nor any document was marked. The Tribunal on analysing the oral and documentary evidence concluded that when the vehicle is insured with the appellant-Insurance Company, they are liable to pay compensation for the death of the deceased. Thereafter, the Tribunal proceeded to award compensation for the death of the deceased by taking note of his age, income and other aspects.

5. Assailing the Decree and Judgment of the Court below, the learned counsel for the appellant would vehemently contend that the impugned order has been passed by the Tribunal without application of mind. The Tribunal, in para No.19 of the Judgment has held that the accident had occurred due to rash and negligent act of the deceased in hitting the two wheeler against a tree which was lying on the road. Having rendered such a finding, it was erroneously held that since the two wheeler is insured with the appellant-Insurance Company, they are liable to pay the compensation amount. The learned counsel for the appellant would contend that admittedly, the deceased was the owner of the vehicle and he was driving the vehicle on the fateful day. The accident has occurred due to the own negligence of the deceased and there was no other vehicle involved in the accident. The deceased is not a third party to the accident in which he died.

Therefore, when the deceased himself was the owner cum driver of the vehicle and he died due to hitting of a lying tree without the involvement of any other motor vehicle, the claimants are not entitled for any amount as compensation. Therefore, the learned counsel for the appellant prayed for setting aside the Judgment and Decree of the Tribunal.

6. The learned counsel for the claimants/respondents would only submit that it is admitted by the appellant insurance company that the vehicle in question is insured with them, while so, they are statutorily liable to pay the compensation amount. In support of his contention that even in the cases where the death was due to own negligence of the owner of the vehicle, the insurance company is liable to pay the compensation amount, the counsel for the claimants/respondents relied on the judgment of the Honourable Supreme Court reported in in the case of **(National Insurance Company Limited vs. Sinitha and others)** reported in **2012 1 MLJ 1164**

7. We have considered the rival submissions and perused the materials placed on record. Even in the claim petition, it was contended by the claimants that the deceased died on account of hitting a branch of a tree lying on the road. It is not the case of the claimants that the deceased died in an accident involving any other motor vehicle. Merely because the motor cycle which the appellant was riding on the fateful day is insured with the appellant Insurance company, they cannot be fastened with any liability to pay compensation to the claimants. The deceased was admittedly the owner cum driver of the vehicle which was insured

with the insurance company and he is not a third party to the accident in which he died. Thus, the accident did not involve any other motor vehicle other than the one in which the deceased was travelling as a pillion rider. The liability of the insurance company to pay compensation is only to the extent of indemnification of the insured against the third person or in respect of damages of property. While so, the insurance company cannot be fastened with any liability under the provisions of the Motor Vehicles Act for the death of the deceased who himself was the owner of the vehicle and when no other motor vehicle was involved in this case. Therefore, the question of the insurer being liable to indemnify the deceased/owner of the vehicle does not arise. Since the deceased himself was the owner of the two wheeler and not a third party, the claim petition filed by the claimants will not come within the purview of Section 146 or 147 of The Motor Vehicles Act for the purpose of payment of compensation. Though the counsel for the respondent has relied upon the Judgment of the Honourable Supreme Court in the case of (**National Insurance Company Limited vs. Sinitha and others**) reported in **2012 1 MLJ 1164**, mentioned supra, in support of his contention that even in cases where the death was caused due to the negligence by the owner of the vehicle the insurance company is liable to pay the compensation amount, on a perusal of the said Judgment of the Honourable Supreme Court, we find that it deals only with maintainability of claim for compensation under Section 163A of The Motor Vehicles Act and not about the liability of the insurance company to pay the compensation amount even in case of death of owner of the vehicle for his own negligence. Therefore, the dictum laid down in the said Judgment cannot be made

the impugned Judgment and Decree of the Tribunal cannot be sustained. The Appeal filed by the Insurance Company deserves only to be allowed. At the same time, it is needless to mention that the claimants are entitled for payment of Rs.1,00,000/- only towards Personal Accident Cover proportionate to the premium paid by the deceased.

8. In the result, the Judgment and Decree dated 04.08.2015 passed in MCOP No. 534 of 2012 on the file of Motor Accident Claims Tribunal/Principal District Judge, Cuddalore is set aside and the Civil Miscellaneous Appeal is allowed. No costs. In view of this Judgment setting aside the Judgment and Decree passed by the Tribunal, the Insurance Company is at liberty to withdraw the amount, if any, deposited, over and above Rs.1 lakh, as indicated above, with accrued interest. Consequently, connected CMP No. 4633 of 2016 is closed.

(R.P.S.J.) (A.D.J.C.J.)

01-11-2017

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To

The Principal District Judge
Motor Accidents Claims Tribunal
Cuddalore

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R. SUBBIAH, J
and
A.D. JAGADISH CHANDIRA, J

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Pre-delivery Judgment in
CMA No. 556 of 2016

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