



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.11.2017
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

C.M.A. (MD) No.430 of 2016
and
CMP (MD) No.5764 of 2016

United India Insurance Co. Ltd,
63-C, Palaymkottai Road,
Government Hospital Back Side,
Tiruchendure.

... Appellant

Vs.

1.R.Sathya
2.Minor R.Ponselvi
3.Minor R.Vignesh
4.Minor R.Chandru
5.S.Krishnammal
6.S.Murugan

(Minor respondents 2 to 4
are rep.by their mother
and natural guardian,
1st respondent)

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree order dated 16.12.2015 made in MCOP.No.302 of 2014 on the file of the Motor Accidents Claims Tribunal, I Additional District District Judge, Thoothukudi.

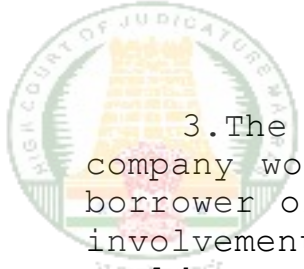
For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Siva Thilakar
for R1 to R5
No appearance for R6

JUDGMENT

The insurance company has filed this appeal questioning the impugned award on the ground of liability.

2.The deceased Rajkumar had borrowed the two wheeler from the owner Murugan. When he was riding the vehicle, he had lost the balance due to an act of god and met with an accident. He died as a result. The claimants filed petition under Section 163 A of the Motor Vehicles Act. The Tribunal awarded compensation to the tune of Rs.4,50,500/- with interest. This is under challenge in this appeal.



3.The learned counsel appearing for the appellant insurance company would contend that the deceased was none other than the borrower of the two wheeler from the vehicle owner. There is no involvement of another motor vehicle. In this case, the borrower would step into the shoes of the real owner. In such case, even though enquiry into negligence may be alien to proceedings under Section 163 A of the Act, the question is whether the very petition can be said to be maintainable. He placed reliance on the decision of the Hon'ble Supreme Court reported in **2009 2 TNMAC 169 (SC) (Ningamma & Another Vs. United India Insurance Co. Ltd).**

4.The Hon'ble Supreme Court held that a petition under Section 163 A of the Act will not be maintainable when the deceased drove the vehicle which was borrowed from the real owner and an accident was caused without the involvement of any other vehicle. In fact, an order of remand was made in the said decision. The learned counsel for the appellant submits that following remand, the High Court of Karnataka awarded compensation only under Section 140 of the Act by judgment dated 29.09.2010. The said decisions are squarely applicable to the case on hand.

5.I am therefore constrained to set aside the award dated 16.12.2015 made in MCOP.No.302 of 2014 on the file of the Motor Accidents Claims Tribunal, I Additional District District Judge, Thoothukudi. This appeal is allowed.

6.It is seen that the appellant insurance company has already deposited the entire compensation amount and the first and fifth respondents were permitted to withdraw 25% of the deposited amount. The appellant insurance company is permitted to withdraw the balance amount of 75% alone. It is made clear that the appellant shall not take steps to recover the amount already withdrawn by the first and fifth respondents. Even if they have not withdrawn, their right to withdraw 25% of the deposited amount shall not be affected by the outcome of this appeal.

7.This Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
I Additional District District Judge,
Thoothukudi.



2. The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No.88901

+1cc to Mr.S.Siva Thilakar, Advocate Sr.No.88526

SKM

VB/KK/SAR2/23/01/2018/3P/6C

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