BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.(MD)No.132 of 2011
and M.P.(MD)No.1 of 2011

M/s. United India Insurance Company
Limited through its Branch Manager,
Nagercoil. ... Appellant/ 3rd Respondent

Vs.

1.Leyal
2.Geethambili
3.Been Swarambika
4.Hindu Prasad
5.Omprakash ...1st to 5th Respondents/Petitioners
6.Brightsingh ...6th Respondent/1st Respondent
7.D.A.Justin Bright ...7th Respondent/2nd Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and Order passed in M.C.O.P.No.74 of 2005 dated 19.06.2007 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Kuzhithurai.

For Appellant	:	Mr.J.S.Murali
For R1 to R5	:	MrS.J.Anandhavalli
For R6	:	Mr.G.Gomathi Sankar
For R7	:	Mr.K.P.Narayana Kumar

J U D G M E N T

This Civil Miscellaneous Appeal is directed under Section 173 of Motor Vehicles Act, 1988, by the Insurance Company, as against the award passed in M.C.O.P.No.74 of 2005 dated 19.06.2007 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Kuzhithurai.

2. It is a case of fatal accident that took place on 25.11.2004 at about 10.30 a.m, at Kuzhithurai Melpuram road, in which, the driver of the motor bike bearing registration No.TN-74, E-9238, which is insured with the appellant-Insurance Company, drove the vehicle in a rash and negligent manner and dashed against the deceased, who was walking on the eastern side of the road. Due to that, the deceased was thrown away from the spot and sustained grievous injuries on the right forehead and left eyebrow. He succumbed to his injuries on 28.11.2004.

3. The claimants filed an application in M.C.O.P.No.74 of 2005 dated 19.06.2007 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Kuzhithurai, seeking compensation.

4. Before the Tribunal, the claimants examined two witnesses as P.Ws.1 and 2 and marked 12 documents as Ex.P.1 to Ex.P.12. The appellant Insurance Company did not examine any oral evidence and marked 1 document.

5. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the appellant/Insurance Company and directed the appellant/Insurance Company to pay a sum of Rs.3,00,000/-, as compensation.

6. Against which, the appellant/Insurance Company has filed this present appeal on the ground that the Tribunal ought not to have fixed liability on the appellant Insurance Company since the 7th respondent had sold the vehicle. Apart from that, the monthly income of the deceased fixed at Rs.4500/- is also on the higher side and he would not have earned Rs.4,500/- in those days and the second and fourth respondents, are also not the dependants of the deceased. Hence, he prayed for appropriate orders.

7. Per contra, the learned counsel for the respondents 1 to 5/claimants contented that the Tribunal after perusing Ex.P.8, 9 and 11 awarded a just and reasonable compensation and the same does not require interference and hence, this appeal is liable to be dismissed.

8. Heard the learned counsel appearing on both sides and perused the materials available on record.

9. The moot question arises in this civil miscellaneous appeal is that whether the insurance company is liable to pay compensation once the vehicle is sold to a third party, but not transferred in the record of R.T.O. as per Motor Vehicles Act before the date of incident?

10. In this connection, it is apt to mention the judgment of Bombay High Court, wherein, in the case of ***New India Assurance Company Limited and another Vs. Kausalyabai Onkar Lahudhkar and others,*** in which, it has been held as follows:-

" 8. In the similar way, our High Court in the matter of Anguribai Babulal Patodi vs. United India Insurance Co. Ltd. & others reported in 2003(Supp.2) Bom.C.R. 530 held that unless and until there is a breach of terms and conditions of on - 09/06/2013 16:42:39 ::: 10 fa553.96 the insurance policy, the Court cannot compel the insurance company for payment of compensation.

Head Note - A reads thus :

" Motor Vehicles Act, 1939, Secs. 103-A, 94 & 95-Vehicle transferred from one owner to another-insurer's liability-During currency of insurance-MACT exonerating insurer from liability because ownership of vehicle had been transferred in January 1989 and registered with RTO in March 1989-Insurance cover was for period 16-1-89 to 14-1-90- Accident took place on 10-11-89-

Held, so far as 3rd party risk is concerned insurer is liable during the currency of insurance even if the ownership of the vehicle has changed and it has not been intimated to the insurer. It is not effected by terms or conditions of the policy. Sections 94 and 95 of the Act fortify the position that any person who will use the vehicle is not required to insurer it separately. Transferee of vehicle ::: Downloaded on - 09/06/2013 16:42:39 ::: 11 fa553.96 may not get personal benefit in such case, but as far as third party risk is concerned, he can enforce it."

(emphasis supplied)

11. Similar view was taken by the High Court of Bombay in the matter of National Insurance Co. Ltd., vs. Bhargavi Gopala Krishnan & Ors reported in 2006 (4) Bom.C.R. 608.

12. That apart, the Tribunal has rightly fixed the liability on the Insurance Company and the compensation awarded by the Tribunal is a just compensation. Further, the amounts awarded under the other heads are also just and reasonable and therefore, there is no infirmity in the award passed by the Tribunal and the same does not require interference at the hands of this Court

13. In view of the above mentioned cited authorities and facts of the present case, the submission made by the learned Counsel appearing on behalf of the appellant/Insurance Company that as per Sale of Goods Act, on the date of accident, they are not liable to pay compensation though insurance policy was well in force, is not acceptable.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Motor Accident Claims Tribunal, Subordinate Court, Kuzhithurai, made in M.C.O.P.No.74 of 2005 dated 19.06.2007, is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimants are permitted to withdraw their respective share as apportioned by the Tribunal, with proportionate interests and costs without filing

any formal petition. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

/ True Copy /

Sub Assistant Registrar(C.S.)

To,

The Sub Judge, Motor Accident Claims Tribunal,
Kuzhithurai.
Kanyakumari District.

+1cc to Mrs.J.ANANDHAVALLI, Advocate SR.No.64818
+1cc to MR.G.GOMATHI SANKAR, Advocate SR.No.65515
+1cc to MR.K.P.NARAYANA KUMAR, Advocate SR.No.65018
+1cc to MR.J.S.MURALI, Advocate SR.No.65037

ssm
MAS/KP/SAR2:07.08.2017:4P-6C

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