IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1814 of 2017
and C.M.P.No.9701 of 2017

M/s.United India Insurance Company Ltd,
77 AA Street, Salem-1. ...Appellant /Respondent

Vs

Selvi ... Respondent/Claimant

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.02.2017 made in MCOP No.1488 of 2012 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellant : Mr.D.Bhaskaran

For Respondent : Mr.M.R.Thangavel

JUDGMENT

By the impugned order dated 14.02.2017, the Tribunal has awarded a sum of Rs.4,88,340/- as against the claim of Rs.10,00,000/- made by the respondent / claimant for the death of one Karthik @ Karthikeyan/owner of the vehicle, in a motor vehicle accident that had occurred on 07.01.2012. Aggrieved over the same, the appellant insurance company has preferred this appeal.

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2.The case in brief, is as follows:

On fateful day, ie. on 07.01.2012, at about 7.00 p.m., the deceased Karthik @ Karthikeyan was riding his motorcycle bearing Registration No.TN-30-AK-9024 along with one Mani @ Manikandan on the Sankari - Salem main road. When he was

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proceeding near Vidhyabarathi School, Neikkarapatty, in front of Natesan's House, he turned the motorcycle on his left side to avoid hitting a pedestrian, who suddenly crossed the road, as a result of which, he lost control and hit the bridge wall and thereby, caused the accident. Due to the said impact, the deceased sustained grievous injuries and he was immediately taken to Sri Gokulam Hospital, Salem. Despite the best treatment, the deceased died on 12.01.2012. Claiming a compensation of Rs.10,00,000/-, his mother filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.4,88,340/- with interest at the rate of 7.5% per annum from the date of petition. Hence, this appeal by the appellant insurance company.

3.The learned counsel for the appellant insurance company submitted that the claimant claimed compensation for the death of the owner of the vehicle, whereas, the liability of the insurance company is only for the purpose of indemnifying the insured against the liability incurred towards third party and there was no contract to cover risks for the deceased rider and hence, the claimant is entitled only for a sum of Rs.1,00,000/- towards Compulsory Personal Accident Coverage as per the terms and conditions of the insurance policy. In support of the same, he placed reliance on the decision of this Court in the case of Divisional Manager, United India Insurance Co. Ltd. v. R.Rekha [2017 (2) TN MAC 674 (DB)].

4.The learned counsel for the respondent has made his submission, supporting the award passed by the Tribunal.

5.Heard both sides and perused the records.

6.It is not in dispute that the deceased is the owner of the vehicle and the accident took place, due to the involvement of any other vehicle other than the one in which the deceased was riding. However, the Tribunal, treating the claim petition as one filed under Section 163A of the Motor Vehicles Act, has awarded a total compensation of Rs.4,88,340/- with interest at 7.5% per annum from the date of claim petition, to the claimant, for the death of the deceased. According to the appellant, there is no contractual liability on the part of the insurance company to indemnify the legal representative of the insured on account of his death and the claimant is entitled for compensation only under Personal Accident Coverage.

7.In Divisional Manager, United India Insurance Co. Limited v. R.Rekha, (cited supra), at para 26, the Division Bench has held as follows:

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> “26.As far as the present case is concerned, the deceased was travelling as a pillion rider in the Two-wheeler owned by him. Admittedly, the deceased himself was the owner of the two-wheeler. At the time of accident, the driver of the Two-wheeler suddenly applied brake and hit a cyclist, which led to the accident. No other Motor Vehicle has been involved in this case. Thus, the accident did not involve any other Motor Vehicle other than the one in which the deceased was travelling as a Pillion rider. Therefore, the liability of the insurance company 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 insured 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. Therefore, we hold that 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.Following the aforesaid decision, the award dated 14.02.2017 passed by the Tribunal in MCOP.No.1488 of 2012 is liable to be set aside and is thus, set aside. However, the respondent/claimant is entitled for payment of Rs.1,00,000/- towards Personal Accident Coverage, as per the terms and conditions of the insurance policy.

9.This Civil Miscellaneous Appeal stands allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

10.The appellant Insurance Company is directed to deposit the compensation of Rs.1,00,000/-, less the amount if any already deposited, within a period of two weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same to the bank account of the

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respondent / claimant through RTGS, within a period of one week thereafter.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gbi
To

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Salem.

2.The Section Officer,
VR Section,
Madras High Court.

+1cc to Mr.D.Bhaskaran, Advocate SR.83795
+1cc to Mr.M.R.Thangavel, Advocate SR.83560

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and C.M.P.No.9701 of 2017

SV(CO)
CB(15/06/2020)

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