IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2019

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1850 of 2017
and
C.M.P.No.10068 of 2017

United India Insurance Co. Ltd.,
having B.O.II at Oriental Theatre Complex,
77, Arunachala Aachari Street,
Salem - 636 001. .. Appellant

vs.

1.Minor S.Jeeviga
rep. By next friend and Grandfather
Prof.Dr.P.M.Subramaniam

2.S.Visalakshi
3.Dr.S.Subramaniyan .. Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 13.04.2016 made in M.C.O.P.No.888 of 2010 on the file of the Motor Accidents Claims Tribunal (Special District Court),Salem.

For Appellant : Mr.S.Arun Kumar
For Respondents : Ms.Elizabeth Ravi

JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

This appeal has been filed by the insurance company being the insurer of the deceased party, who was the owner of the vehicle. The respondents herein are the legal representatives of the deceased.

2.On 25.07.2009, when the deceased was travelling along with his wife and minor child in his own Maruti Alto car driven by him, the said car went out of control and met with an accident by hitting against a tamarind tree. Subsequently, he died in the hospital. His wife also died on the spot. Under those circumstances, the first respondent/minor claimant filed a claim petition seeking a sum of Rs.80 lakhs as compensation under Section 166 of the Motor Vehicles Act, 1988.

3.The Tribunal, fixed the liability on the appellant after holding that the policy cover was in existence at the time of accident and the deceased was having a valid licence. A factual finding has been given attributing negligence on the part of the deceased. However, no specific finding has been given on the liability of the appellant since the policy admittedly does not cover the owner of the vehicle.

4.The Tribunal thereafter proceeded to fix the compensation payable for the death of the deceased at Rs.34,13,240/-. Challenging the same, the present appeal has been filed.

5.Learned counsel appearing for the appellant submitted that the policy does not cover the owner of the vehicle and the personal coverage is only for Rs.25,000/- and therefore, the claim petition is not maintainable. The deceased himself was responsible for the accident, which factum has also been taken note of by the Tribunal by giving a specific finding to that effect. To substantiate his contention, learned counsel made reliance upon the judgment of the Division Bench of this Court in Divisional Manager, United India Insurance Co. Ltd., Vs. R.Rekha ((2017) 2 TNMAC 674 (Division Bench)).

6.Learned counsel appearing for the respondents submitted that inasmuch as the factum of accident and death are not in dispute, the award of the Tribunal will have to be confirmed, especially when there was admittedly a policy in currency. Thus, the appeal will have to be dismissed.

7.Considering the similar issue, a Division Bench of this Court in the judgment referred supra was pleased to hold that the liability of the insurance company can only be to the extent of indemnification of the insured against the third party or in respect of damages to the property. The following paragraph would be apposite:

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 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. 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.It is nobody's case that the appellant is liable to pay under the policy viz., Ex.P4 for the death of the deceased. The personal coverage was only for Rs.25,000/- which has been paid. Therefore, the Tribunal, in our considered view, is patently wrong in fastening the liability upon the appellant. Further more, the present claim petition itself is not maintainable as rightly submitted by the learned counsel for the appellant as the deceased drove his vehicle and dashed against the tamarind tree resulting in his death. Thus, looking from any perspective, the compensation awarded cannot be sustained.

9.In such view of the matter, the award dated 13.04.2016 in M.C.O.P.No.888 of 2010 passed by the Motor Accidents Claims Tribunal (Special District Court) Salem is set aside and the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition stands closed.

Accordingly, the appellant insurance company is entitled to withdraw the amount deposited, if any.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

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

Copy to
The Record Keeper,
V.R. Section, High Court, Madras.

+1cc to Mr.S.Arun Kumar , Advocate SR.No.106447
+1cc to Ms.Elizabeth Ravi , Advocate SR.No.105989
C.M.A.No.1850 of 2017

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A.SK(15/07/2020)