IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1866 of 2017
and C.M.P.No.10093 of 2017

National Insurance Company Ltd,
Block-25, Jawaharlal Nehru Salai,
Neyveli Township
by its Divisional Manager. ... Appellant/Respondent

Vs

1.Balakrishnan
2.Manimekalai
3.Karpagam
4.Karmegam ... Respondents/Petitioners

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 04.10.2016 made in MCOP No.53 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Neyveli.

For Appellant : Mr.D.Bhaskaran

For R1 and R2 : Mr.M.Selvam

For R3 : No Appearance

JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the respondents 1 and 2 and perused the materials placed before this Court.

2.In respect of an accident that had occurred on 10.11.2013, in which, one Sathiyakrishnan, rider-cum-owner of the motorcycle bearing Regn.No.TN31 BX 2549 insured with the appellant insurance company, died, the legal heirs of the deceased filed a claim petition under Section 163(A) of the Motor Vehicles Act, claiming a compensation of Rs.20,00,000/-. The Tribunal has awarded a total compensation of Rs.10,19,072/- with interest at 9% per annum from the date of petition. Aggrieved over the same, the appellant, who is the insurer of the vehicle involved in the accident, has preferred this appeal.

3.The appellant Insurance company has questioned the maintainability of the claim petition filed by the respondents/claimants and the consequential liability fastened on them by the Tribunal to pay compensation to the claimants on the ground that there is a violation of the condition of the insurance policy. According to them, when the owner of the vehicle died in the road accident without the involvement of any other motor vehicle, he cannot be construed as a third party for the purpose of payment of compensation and at best, the claimants, who are the legal heirs of the deceased, are only entitled for payment of Rs.1,00,000/- under the Personal Accident Cover as per the terms of the policy and the amount of premium paid thereof. In support of his contention, he placed reliance on the judgment of the Division Bench of this Court in the case of Divisional Manager, United India Insurance Co. Ltd., Vs. R.Rekha [2017 (2) TN MAC 674 (DB)], wherein, at para 26, it is held as follows:

> "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".

4.This Court finds considerable force in the submission so made on the side of the appellant insurance company. It is an admitted fact that the deceased is the owner of the vehicle and the accident was caused, due to the involvement of any other vehicle other than the one in which the deceased was riding. As such, there is no liability on the part of the insurance company to indemnify the legal representatives of the insured on account of his death and the claimants are entitled for compensation only under Personal Accident Coverage, as per the dictum laid down by the Division Bench of this Court in the decision cited supra.

5.In such view of the matter, the award of the Tribunal dated 04.10.2016 passed in MCOP.No.53 of 2014 is set aside. However, the respondents/claimants are entitled for payment of Rs.1,00,000/- towards Personal Accident Coverage, as per the terms and conditions of the insurance policy.

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

7.It is reported that as directed by this Court, the appellant Insurance Company has already deposited a sum of Rs.1,00,000/- before the Tribunal. In view of the same, the Tribunal shall transfer the compensation amount in equal proportion to the respective bank accounts of the respondents/ claimants through RTGS, within a period of one week thereafter.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

gbi

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Neyveli.

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

+1cc to Mr.M.Selvam, Advocate SR.No.84126

+1cc to Mr.D.Bhaskaran, Advocate SR.No.83794

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SR(CO)
GMY(21/02/2020)