



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1354 of 2010

and

M.P.No.1 of 2010

(Through Video Conferencing)

The New India Assurance Co. Ltd.,  
Kumaran Shopping Complex,  
Kumaran Road, Tirupur.

... Appellant/2<sup>nd</sup> Respondent

Vs.

1.Jothi,

2.Minor Thenmozhi

3.Minor Devayani

(Minors 2<sup>nd</sup> and 3<sup>rd</sup> respondents rep.  
by Mother & NF 1<sup>st</sup> respondent)

4.Mayangathal

5.Murugan

... Respondent 1 to 5/Claimants 1 to 5

6.M.Ranganathan

... 6<sup>th</sup> Respondent/1<sup>st</sup> Respondent

(6<sup>th</sup> respondent exparte before the Lower Court)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.804 of 2004, dated 25.01.2008, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.5, Coimbatore at Tiruppur.

For Appellant

: M/s.Harini for  
Mr.N.Vijayaraghavan

For R1 to R3 & R5

: Mr.S.Mukund for  
M/s.Saravanabhavan Associates.

R6

: Exparte



## J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned Judgement and Decree dated 25.01.2008 passed by the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.5, Coimbatore at Tiruppur in M.C.O.P.No.804 of 2004.

2. By the impugned Judgement and Decree, the Tribunal has awarded a sum of Rs.6,71,000/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the 1<sup>st</sup> to 5<sup>th</sup> respondents/claimants. Since the 4<sup>th</sup> respondent has died during the pendency of the claim petition, the share of the 4<sup>th</sup> respondent was granted to the 5<sup>th</sup> respondent the legal representative of the deceased the 4<sup>th</sup> respondent.

3. The claim was originally filed by the 1<sup>st</sup> to 4<sup>th</sup> respondents/claimants under Section 166 of the Motor Vehicles Act, 1988. Though the 1<sup>st</sup> to 4<sup>th</sup> respondents/claimants stated that they were entitled for a sum of Rs.26,25,000/- as compensation, they restricted the claim to Rs.15,00,000/-.

4. Subsequently, during the course of the proceedings, the 1<sup>st</sup> to 5<sup>th</sup> respondents/claimants filed I.A.No.1665 of 2007 to convert the claim petition under Section 163(A) of the Motor Vehicles Act, 1988. I.A.No.1665 of 2007 was later allowed.

5. In the present Appeal, the appellant insurance company has challenged the impugned judgement and decree on the ground that the deceased Palanisamy had borrowed the motorcycle of the 6<sup>th</sup> respondent to ride and died in an accident while riding the motorcycle in the rain.

6. It is stated the deceased Palanisamy aged about 30 years rode the insured motorcycle in rain and therefore, there was negligent as he allowed it to skid and fell into a mud pit, as a result of which, he sustained grievous injury on his head and died on the spot.

7. It is submitted that since the deceased Palanisamy who borrowed the motor cycle of the 6<sup>th</sup> respondent stepped into shoes of the 6<sup>th</sup> respondent owner and therefore the 1<sup>st</sup> to 5<sup>th</sup>



respondents/Claimants cannot claim compensation as legal representatives of the deceased for the deceased was himself a tortfeasor.

WEB COPY

8. It is the contention of the learned counsel for the appellant that the issue is no longer res-integra and the issue is covered against the 1<sup>st</sup> to 5<sup>th</sup> respondents/claimants, by the following decisions:-

- i. Ningamma and Another Vs. United India Insurance Company, reported in 2009 (13) SCC 710.
- ii. National Insurance Company Limited Vs. Sinitha and Others, (2012) 2 SCC 356.
- iii. United India Insurance Company Limited Vs. Sunil Kumar and Another, (2014) 1 SCC 680.
- iv. New India Assurance Company Limited Vs. Sadanand Mukhi and Others, (2009) 2 SCC 417.
- v. Ramkhiladi and Another Vs. The United India Insurance Company Limited and Another, (2020) 2 SCC 550.
- vi. Recent decision of this court in C.M.A.No.1848 of 2017, dated 12.03.2020, C.M.A.No.2967 of 2017, dated 11.03.2020 and C.M.A.No.3348 of 2017, dated 05.03.2020.

9. Per contra learned counsel for the 1<sup>st</sup> to 5<sup>th</sup> respondents/ claimants submitted that the impugned judgement and decree awarding the compensation to the 1<sup>st</sup> to 5<sup>th</sup> respondents/claimants was well reasoned and therefore requires no interference.

10. I have considered the arguments advanced by the learned counsel for the appellant Insurance Company and the learned counsel for 1<sup>st</sup> to 3<sup>rd</sup> and 5<sup>th</sup> respondents/1<sup>st</sup> to 3<sup>rd</sup> and 5<sup>th</sup> claimants. I have also perused the evidence on record and the documents.

11. The accident is said to have taken place on 18.05.2001 when the deceased was riding a borrowed insured motorcycle belonging to the 6<sup>th</sup> respondent with the PW2 - pillion rider. They rode the insured motorcycle in the rain, when the insured motorcycle skidded off the road and fell into mud pit, as a result of which, the deceased Palanisamy died on the spot.



12. Since the deceased had borrowed the insured motorcycle of the 6<sup>th</sup> respondent, he stepped into the shoes of the 6<sup>th</sup> respondent. The deceased cannot be said to be a third party as per the ruling of the Hon'ble Supreme Court in Ningamma and Another Vs. United India Insurance Company, which has been followed by the Courts consistently.

13. Recently, the Hon'ble Supreme Court in Ramkhiladi and Another Vs. United India Insurance Company and Another, (2020) 2 SCC 550, also held as follows:-

9.6. In view of the above and for the reasons stated above, in the present case, as the claim under Section 163-A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163-A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle.

14. Thus, the impugned Judgment fixing the liability on the appellant Insurance Company under Section 163-A of the Act, is liable to be set aside. Therefore, the award passed by the Tribunal is set aside. However, the appellant Insurance Company is liable to pay only a sum of Rs.50,000/- under Section 140 of the Act together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit before the Tribunal.

15. The appellant Insurance Company is directed to deposit only a sum of Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988 together with interest at 7.5% per annum from the date of filing of the claim petition till the date of such deposit, less the amount already deposited if any, within the period of six weeks from the date of receipt of a copy of this Judgment and recover the same from the 6<sup>th</sup> respondent owner of the insured motorcycle in accordance with law.



WEB COPY

16. It is also made clear that since a meagre amount of Rs.50,000/- is awarded, no amount is awarded to the 5<sup>th</sup> respondent who is only a legal heir of the deceased 4<sup>th</sup> respondent.

17. The 1<sup>st</sup> respondent/1<sup>st</sup> claimant the widow of the deceased Palanisamy is permitted to withdraw the amount of compensation of Rs.50,000/- together with interest for herself and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, by filing suitable application before the Tribunal.

18. In case, if the appellant Insurance Company has already deposited the compensation awarded by the Tribunal, the appellant Insurance Company is permitted to withdraw the excess amount deposited by it together with interest accrued thereon, by filing suitable application before the Tribunal.

19. Accordingly, this Civil Miscellaneous Appeal is disposed of with the above directions. No cost. Consequently, connected Miscellaneous Appeal is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

jen

To:

The Motor Accidents Claims Tribunal,  
Additional District Court, Fast Track Court No.5,  
Coimbatore at Tiruppur.

Copy to

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

C.M.A.No.1354 of 2010  
and M.P.No.1 of 2010

AK II(CO)  
B.VC (22/09/2021)