

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-03-2020

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.1319 OF 2015

1.Geetha, Wife of Sivakumar

2.Minor Sindhuja

3.Minor Sivapriyan

4.Minor Shivani

(Minor Appellants 2 to 4 represented by their  
mother next friend / first appellant)

... Appellants/Petitioners 1 to 4

vs.

United India Insurance Company Limited,  
Block-19,  
Aurobindo Road,  
Neyveli.

.. Respondent/Respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2015 passed in M.C.O.P. No.2 of 2014 on the file of the learned Sub Judge, Sub Court-cum-Motor Accidents Claims Tribunal, Neyveli.

For Appellants : Ms.R.Poornima

For Respondent : Mr.J.Chandran

J U D G M E N T

The Civil Miscellaneous Appeal on hand is filed against the judgment and decree dated 30.01.2015 passed by the learned Sub-Judge, Sub-Court-cum-Motor Accidents Claims Tribunal, Neyveli in M.C.O.P. No.2 of 2014.

2. As per the claim petition, the accident occurred on 27.09.2013 at 20.00 hours between Neyveli Main Bazaar, Vadakathu Village Main Road in Neyveli Block II in front of T.A. Office speed breaker. An FIR was registered in Crime No.532 of 2013 under Section 304(A) of IPC.

3. The deceased Sivakumar was riding his vehicle Hero Honda Splendor Plus Motor Cycle bearing Registration No.TN-31-AB-1941 from Neyveli Main Bazaar to his mother-in-law's house at Vadakathu Village and he sustained injuries in the right and left of his forehead and all over the body and the treatment was taken, however, he died on 02.10.2013, after four days from the date of accident. The first appellant is the wife of the deceased victim and the other appellants are the minor children.

4. The claim petition was filed by the petitioners for claiming a compensation of Rs.20 lakhs.

5. The Trial Court adjudicated the issues with reference to the documents and the evidences.

6. The following issues were framed by the Tribunal:-

"(1) Whether the deceased Sivakumar was negligent in driving his Motor Cycle on 27.09.2013 ?

(2) Whether, being the legal heirs of the deceased Sivakumar, the insured herself along with children can maintain this application against the insurer ?

(3) If so, what is the quantum ?"

7. With reference to Point No.1, the Trial Court considered the documents as well as the evidences. Admittedly, the deceased Sivakumar fell down from the Motor Cycle bearing Registration No. TN-31-AB-1941 on Neyveli Main Bazaar to Vadakathu Main Road, Block II, in front of T.A. Office speed breaker, on 27.09.2013 at 20.00 hours and succumbed to injuries. Ex.P-1 is the Copy of the F.I.R., which reveals that the deceased was negligent in driving the Motor Cycle and the same was resulting in his fatal injuries. Ex.P-3 is the Autopsy Report. Ex.P-8 is the Death Certificate. PWs-1 and 2 have specifically admitted the manner of accident and negligent of the deceased. Though it is stated in the claim application and in the oral evidence of PWs-1 and 2 that due to dazzling light coming from opposite vehicle and speed breaker, the accident took place. Ex.P-1 F.I.R. does not disclose the said facts. Further, Pws-1 and 2 are not the eyewitnesses. Considering all these facts and circumstances, the Tribunal arrived a conclusion that the accident took place and the vehicle referred in the F.I.R., also involved in the accident and the deceased Sivakumar had fatal injuries and further, it was admitted that the deceased Sivakumar had committed an act of negligent.

8. With reference to Point No.2, regarding the maintenance of the claim application, the Tribunal elaborately considered the issues based on the principles laid down by the Hon'ble Supreme Court of India as well as the High Courts. The settled points, which all are not disputed by either side are considered by the Tribunal as under:-

"In General:

1. The liability of the Insurance Company is statutory.

2. The said liability of the insurer arises for the purpose of indemnifying the insured under the contract of insurance.

3. In a tortuous liability the basic liability is on the tort-feasor viz., the driver, and the vicarious liability is on the owner of the vehicle.

4. Unless there is a primary liability on the owner, the insurer cannot be held liable.

In case of the death or bodily injury of the owner/insured of vehicle:

1. The liability of the Insurance Company depends upon the policy of the insurance.

2. Liability of the insurer company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property.

3. If the owner is not covered under the policy, the Insurance Company is not liable.

4. If there is a personal accident coverage, the Insurance Company is liable.

5. When the owner himself or herself is the claimant claiming compensation for the death of his or her kin, as dependent/legal heir, the Insurance Company is not statutorily liable.

6. Section 147 does not require an Insurance Company to assume risk for death or

bodily injury to the owner of the vehicle. Section 147 deals with the liability of the Insurance Company to the extent of indemnification of the insured against a third person.

7. If there is any personal accident insurance, which is otherwise known as 'P.A. Coverage', an owner of a vehicle can maintain a claim petition.

8. The liability under Section 163-A of Motor Vehicles Act is on the owner of the vehicle as a person and the claimant cannot be both a claimant as also the recipient.

9. Section 166 deals with just compensation to a claimant who is entitled to file a claim petition for the death of the breadwinner or for the bodily injury of the claimant.

10. In a comprehensive policy of insurance, if the personal accident of the owner is covered, the legal heirs of the owner can maintain a claim.

11. On the same analogy, the owner/insured being the legal heir of the deceased/passenger, who is covered under the policy is also entitled for a just compensation under Section 166 of the Act.

12. The insured, being the legal heir in a dual capacity, is entitled to be indemnified by the Insurance Company and is also entitled to be a recipient of such claim."

9. As far as the present case is concerned, admittedly, the petitioners are the legal heirs/dependents of the deceased Sivakumar, who drove the Motor Cycle, which is owned by the first petitioner and insured with the respondent-United India Insurance Company. The petitioners have also exhibited Ex.P-6 = Ex.R-1 Insurance Policy copy, which reveals that a sum of Rs.50/- was paid under Compulsory P.A. for Owner-Driver. The limitations as to use reveals that death and bodily injury in respect of any one accident and damage to third party property in respect of any one claim or series claims arising out of one event of Rs.1,00,000/-. From the said recitals, the Tribunal

arrived a conclusion that the deceased Sivakumar was neither the owner-driver nor the passenger. At the time of accident, the owner is the first defendant, who did not travel along with the deceased Sivakumar.

10. Admittedly, the deceased is the husband of the first appellant/claimant and the owner of the vehicle is the first appellant. The Tribunal relied on the judgments in the case of United India Insurance Company Ltd vs. K.Paruvatham [2012 (1) TANMAC 111], in the case of Ningamma and Another vs. United India Insurance Company Ltd [2009 (13) SCC 710], in the case of National Insurance Company Ltd vs. Krishnan [2013 (6) MLJ 520] and in the case of National Insurance Company Ltd vs. Sinitha and Others [2012 (1) MLJ 1164 (SC)].

11. Considering all the abovesaid judgments, the Tribunal arrived a finding that the deceased himself was to be blamed for the accident. The accident did not involve motor vehicle other than one, which he was driving. As the wife of the deceased is the owner of the motor cycle, he and his children stepped into the shoes of the owner. When there is no primary liability on the owner, the insurer cannot be held liable. RW-1 has also deposed that the policy would cover only third parties and owner cum driver. As the policy under P.A. coverage is only applicable to the owner cum driver/first petitioner, who did not ride the motor cycle, the Insurance Company was held as not liable.

12. This Court is of the considered opinion that the Insurance Company is liable to pay compensation in accordance with the terms and conditions of the contract. If there is a coverage in the policy, then alone the Courts can hold the Insurance Company liable and not otherwise. When the policy in the present case is a P.A. Coverage and would not cover the other persons, then the Tribunal has not committed any perversity or infirmity as such in respect of the findings arrived.

13. The Tribunal has considered the documents and the evidences with reference to the facts and the circumstances placed by the respective parties and considered the legal principles, which all are settled in the matter of P.A. Coverages and the liability of the Insurance Company and this being the factum, this Court is of the considered opinion that the present Civil Miscellaneous Appeal deserves no merit consideration. Consequently, the judgment and decree dated 30.01.2015 passed by the learned Sub-Judge, Sub-Court-cum-Motor

Accidents Claims Tribunal, Neyveli in MCOP No.2 of 2014 is confirmed and the C.M.A.No.1319 of 2015 stands dismissed. However, there shall be no order as to costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

The Subordinate Judge,  
Sub Court-cum-Motor Accidents Claims Tribunal,  
Neyveli.

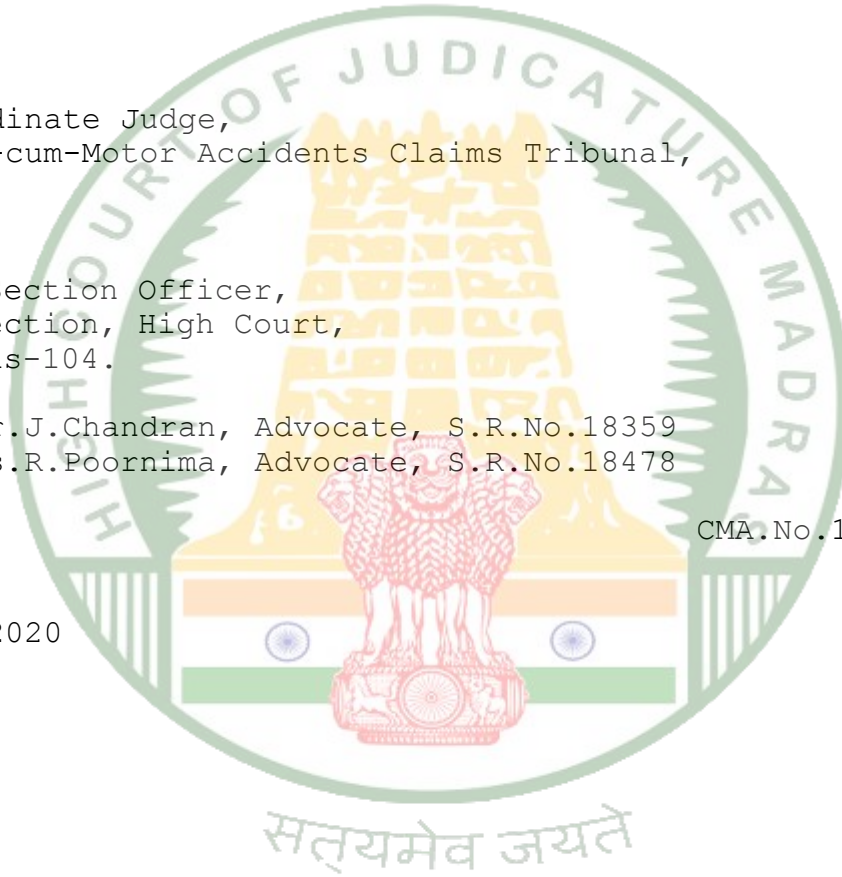
Copy To  
The Section Officer,  
VR Section, High Court,  
Madras-104.

+1cc to Mr.J.Chandran, Advocate, S.R.No.18359

+1cc to Ms.R.Poornima, Advocate, S.R.No.18478

CMA.No.1319 of 2015

VSNII (CO)  
CS/18/09/2020



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