IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2265 OF 2013
AND M.P.NOS.1 OF 2013 AND 2 OF 2015

HDFC General Insurance Co. Ltd.,
No.4, 177, Raheja Towers,
Anna Salai, Chennai 600 002.
... Appellant/2nd Respondent

Vs.

1.Saraswathy (died)
... Respondent/Claimant

2.S.P. Sivarajan
(R2 remained exparte before the Tribunal)
...2nd Respondent/1st Respondent

3.S.Vinod Jain

4.G. Jayanthi Devi

5.R. Sarala
...Lrs of the 1st Respondent

(RR3 to 5 brought on record as Lrs of the deceased 1st respondent, viz., Saraswathy, vide order dated 14.12.2020 made in C.M.P.Nos.13109 to 13111/2020 in C.M.A.No.2265 of 2013)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.07.2012 made in M.C.O.P.No.4624 of 2009 on the file of XVII Additional Judge, City Civil Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mrs.R.Sreevidhya

For Respondents : Mr.K.S. Ganesh Babu
(For R3 to R5)

J U D G M E N T

This matter is heard through “Video-Conferencing”.

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 02.07.2012 made in M.C.O.P.No.4624 of 2009 on the file of XVII Additional Judge, City Civil Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.4624 of 2009 on the file of XVII Additional Judge, City Civil Court, (Motor Accident Claims Tribunal), Chennai. Originally, the 1st respondent filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the death of one Raju who died in the accident that took place on 05.10.2008.

3.According to the 1st respondent, on the date of accident i.e., on 05.10.2008 at 7.00 hours, while the deceased was driving a Car bearing Registration No.TN-10-J-8237 belonging to the 2nd respondent in ECR Road, near Choolerikadu Bus Stop, the Car went out of his control, tilted and fallen down from the Road to eastern side slope and thus, the accident has occurred. In the accident, the deceased sustained fatal injuries. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd respondent and the appellant, as owner and insurer of the offending vehicle respectively.

4.The 2nd respondent remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, as per FIR, the accident had occurred solely due to the fault on the part of the deceased who drove the vehicle. The tort-feasor cannot take advantage of his own fault and claim damages and therefore, the 1st respondent cannot claim any damages for the death of her son who died on his own fault. The victim and victimizer cannot be the same person and hence, the appellant is not liable to pay compensation to the 1st respondent and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and marked 5 documents as Exs.P1 to P5. The appellant/Insurance Company examined one Mr.M.Jayaraj as R.W.1 and marked one document as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the deceased, driver of the Car and directed the appellant/Insurance Company being insurer of the said vehicle to pay a sum of Rs.2,00,000/- as compensation to the 1st respondent, under personal accident coverage.

8.Against the said award dated 02.07.2012 made in M.C.O.P.No.4624 of 2009, the appellant/Insurance Company has come out with the present appeal. Pending appeal, the 1st respondent died. Hence, the respondents 3 to 5 who are impleaded as legal heirs of the deceased 1st respondent vide order of this Court dated 14.12.2020 made in C.M.P.Nos.13109 to 13111/2020 in C.M.A.No.2265 of 2013 are entitled to the compensation awarded to the deceased 1st respondent.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal having held that accident occurred due to rash and negligent driving by the deceased himself, erred in holding that appellant is liable to pay compensation, without properly appreciating the terms of policy. The Tribunal failed to note that premium was paid to cover the risk of owner-cum-driver, under personal accident coverage and deceased was not owner of the vehicle. The Tribunal failed to appreciate the judgment of the Division Bench of this Court and erred in directing the appellant to pay compensation and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the respondents 3 to 5 contended that the accident occurred when the deceased lost control while driving the Car belonging to the 2nd respondent. The 2nd respondent has paid additional premium for personal accident coverage for owner and driver. The Tribunal appreciating the terms of policy properly, has rightly directed the appellant to pay compensation and prayed for dismissal of the appeal. In support of his contentions, the learned counsel relied on the judgment of the Hon'ble Apex Court reported in 2020 (1) CTC 443 [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another], which reads as follows:

> "5.7 Now, so far as the reliance placed upon by the learned Advocate for the Claimants on the decision of this Court in the case of Naveen Kumar (supra), on considering the issue involved in that decision, we are of the opinion that the said decision shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the Claimants. In that case, the issue was as to, who could be said to be the

registered Owner of the Vehicle and the liability of the Owner, who sold the Vehicle, but his name continued to be as the Owner with the Registering Authority. To that, it was held that the person in whose name the Motor Vehicle stands registered is the Owner of the Vehicle for the purpose of the Act.

5.8 However, at the same time, even as per the contract of insurance, in case of personal accident the owner-driver is entitled to a sum of Rs.1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore, the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle."

11.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 3 to 5 and perused the entire materials on record.

12.From the award of the Tribunal, it is seen that it is the contention of the 1st respondent that the deceased lost control of the Car while driving and accident has occurred. No other vehicle was involved in the accident. The Tribunal considering the materials placed before it, held that accident occurred due to fault of the deceased. After holding so, the Tribunal considering the payment of extra premium for personal accident coverage by owner of the vehicle, has awarded compensation to the 1st respondent on the ground that extra premium is paid to cover the risk of owner and driver. It is the contention of the learned counsel appearing for the appellant that premium was collected for personal accident coverage to cover the risk of owner-cum-driver and not owner and driver. The said contention is contrary to the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 169 (SC) [Ningamma & another v. United India Insurance Co. Ltd.], wherein it has been held that the borrower of the two wheeler steps into the shoes of the owner of the vehicle and he is not entitled to maintain the claim petition even under Section 163-A of the Motor Vehicles Act, when he himself is the tort-feasor. In the judgment of the Hon'ble Apex Court reported in (2020) 2 SCC 550 [Ramkhiladi and another Vs. United India Insurance Co. Ltd., and another], the Hon'ble Apex Court referring the Ningamma case, held that the rider of the two wheeler steps into the shoes of the owner and he is entitled to claim compensation under personal accident coverage, when the owner has paid additional premium for personal accident coverage. In view of the two judgments referred to above, the 1st respondent is entitled to claim compensation under personal accident coverage as the deceased/driver of the Car steps into the shoes of the owner of the vehicle. The maximum amount payable to the 1st respondent is only Rs.2,00,000/-. The Tribunal has granted only Rs.2,00,000/- under personal accident coverage to the 1st respondent and there is no error in the award of the Tribunal awarding Rs.2,00,000/- as compensation to the 1st respondent warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.2,00,000/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. The award amount is apportioned among the respondents 3 to 5, who are the legal heirs of the deceased 1st respondent/claimant, as follows: the 3rd respondent is entitled to a sum of Rs.70,000/- and the respondents 4 and 5 are entitled to a sum of Rs.65,000/- each. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.4624 of 2009. On such deposit, the respondents 3 to 5 are permitted to withdraw their share of the award amount, as per the ratio of apportionment fixed by this Court, along with proportionate interest and costs, less the amount if any already withdrawn by the 1st respondent. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Additional Judge,
   Motor Accident Claims Tribunal,
   The XVII Additional City Civil Court,
   Chennai.

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

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.42364

+1cc to Mr.K.S.Ganesh Babu, Advocate, S.R.No.42222

C.M.A.No.2265 of 2013

RSV(CO)
RLP(27/08/2021)