IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.07.2020
Pronounced On	17.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.370 of 2011
and
M.P.No.1 of 2011

(Through Video Conferencing)

United India Insurance Co. Ltd.,
BO, SB/11, Jageer Hussain Salai,
Rasipuram Post, Namakkal District.
... Appellant/2nd Respondent

Vs.

1.Selvammal
2.Lakshmanan
3.Naina Malai
4.Kavitha
5.Kamatchi
6.Srinivasan ... Respondents 1 to 5/Claimants
6th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 25.06.2010 made in M.C.O.P.No.29 of 2008, on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Salem.

For Appellant : Mr.S.Arunkumar

For R1 to R4 : Mr.P.Jagadeesan

J U D G M E N T

The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 25.06.2010 passed by the Motor Accident Claims Tribunal, Salem (In the Court of the I Additional District Judge, Salem), in M.C.O.P.No 29 of 2008.

2. By the impugned Judgment and Decree, the Tribunal has partly allowed the claim petition filed by 1st to 5th respondents

and has awarded a sum of Rs.1,00,000/- as compensation together with interest at 7.5% p.a from the date of the claim petition till the date of deposit under Section 163A of the Motor Vehicles Act, 1988, payable by the appellant Insurance Company to the 1st to 4th respondents/1st to 4th claimants.

3. The 1st to 5th respondents (claimants) are the mother, father, brother, sister and the grandmother of the deceased Kaliyappan who died in an accident on 29.07.2007 while receiving treatment after he met with an accident. It is stated that he was riding Bajaj M80 motorcycle bearing registration No.TN-28-Q-0207 belonging to the 6th respondent when a cyclist came in front of and as a result of which, there was a collision resulting in grievous injury to the deceased and later died in the hospital. In the claim petition before the Tribunal, the 1st to 5th respondents/claimants stated that the accident was due to the negligence of the cyclist and therefore the claim was filed under Section 166 of the Motor Vehicles Act, 1988. The 1st to 5th respondents/ claimants quantified the compensation under various heads for a total sum of Rs.20,75,000/- and restricted same to Rs.20,00,000/-.

4. The Tribunal after considering the evidence on record concluded that the 1st to 4th respondents/1st to 4th claimants were entitled to receive a just compensation under the policy for a sum of Rs.1,00,000/- even though there was no other tortfeasor involved. The Tribunal relied on the decision of the Supreme Court Ningamma and another Vs. United India Insurance Company Limited, 2009 ACG 2020 and the decision of the Supreme Court in Raj Rani Vs. Oriental insurance Co, Ltd., 2009 ACJ 2003.

5. The appellant Insurance Company has filed this appeal on the ground that the deceased himself was a tortfeasor and therefore, the 1st to 5th respondents/claimants were not entitled to maintain a claim petition under Section 163-A of the Act. It is submitted that the Tribunal failed to note the difference between a driver engaged in a commercial vehicle and person riding a two wheeler and the requirements of Section 147 of the Act.

6. The learned counsel for the appellant relied upon the latest decision of the Hon'ble Supreme Court in Ramkhiladi Vs. United India Insurance Co. Ltd., (2020) 2 SCC 550, wherein, it was held as follows:-

> 9.5. It is true that, in a claim under Section 163-A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the

> claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163-A of the Act is based on the principle of no-fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163-A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163-A of the Act against the owner and insurer of the vehicle bearing Registration No. RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing Registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in Dhanraj [Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553 : 2005 SCC (Cri) 363] , an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

7. I have considered the arguments advanced on behalf of the appellant and the respondents. The Tribunal has considered the pathetic condition of the 1st to 4th respondents/1st to 4th claimants and has awarded a sum of Rs.1,00,000/- as compensation considering the fact that the deceased stepped into the shoes of the owner of the vehicle in whose favour there was a policy covering the personal risk in case of disability/death. The decision of the Hon'ble Supreme Court referred to above dealt with "Act Policy" or "Third Party Risk Policy". Therefore, these decisions cannot apply to the facts of the case.

8. Considering the fact that the Policy in the present case covered the risk in case of "personal accident" of the owner, it goes without saying that the deceased stepped into the shoes of the 6th respondent owner in the light of the two decisions of the Hon'ble Supreme Court. I find sufficient reasons to confirm the award. Further, with the death of the deceased, the 1st to 5th respondents/claimants lost their son, brother and grandson respectively. The deceased was aged about 26 years and was the hope and the breadwinner for the family on whom they were dependent for their daily sustenance. Considering the fact that the Tribunal has awarded only a sum of Rs.1,00,000/- as just compensation to them, I am inclined to confirm the award passed by the Tribunal.

9. Therefore, if the appellant Insurance Company has not deposited the compensation awarded by the Tribunal, it is directed to deposit the same together with interest and cost if any as directed by the Tribunal, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

10. On such deposit, the 1st to 4th respondents/1st to 4th claimants are permitted to withdraw the same together with interest in the same proportion given by the Tribunal, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

The Additional District Judge,
Motor Accidents Claims Tribunal,
Salem.

Copy to

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

+1cc to Mr.S.Arunkumar, Advocate Sr.26932

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and M.P.No.1 of 2011

srg 08/02/2021