IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.504 of 2012

1.Kaliamoorthy

2.Mangaiyarkarasi

3.Krishnakumari

4.Velmurugan ...Appellants/ Petitioners

vs.

1.Velmurugan

2.United ndia Insurance Company Limited,
123-A, No:2 Road,
Mayiladuthurai,
Nagapattinam District.
...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decretal order of Motor Accidents Claims Tribunal (Principal Sub Court), Mayiladuthurai, dated 4.7.2011 made in MCOP.No.9/2009.

For Appellant : Mr.A.Sounthar

For Respondents : R1 - Served - No appearance

Mr.D.Bhaskaran for R2

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the claimants aggrieved by the dismissal of the claim petition filed before by the Motor Accident Claims Tribunal, (Principal Sub Court), Mayiladuthurai, in M.C.O.P.No.9 of 2009.

2.Heard Mr.A.Sounthar, learned counsel for the Appellants and Mr.D.Bhaskaran, learned counsel for the second respondent. The first respondent has remained exparte both before the Tribunal as well as this Court.

3.The learned counsel for the Appellant drew the attention of this Court to the following judgments of the Hon'ble Supreme Court:

(a)Oriental Insurance Company Limited vs. Rajni Devi and Others reported in (2008) 5 SCC 736

(b) Ningamma and Another vs United India Insurance Co. Ltd., reported in (2009) 13 SCC 10

Relying upon the aforesaid judgments, he would submit that the claim petition filed by the Appellants under Section 163-A of the Motor Vehicles Act, 1988 is maintainable since the deceased steps into the shoes of the owner of the vehicle (first respondent) and the Appellants who are his dependants are entitled for compensation under the personal accident coverage given under the insurance policy (Ex.R1). In particular, he referred to a decision of the Hon'ble Supreme Court in the case of Oriental Insurance Company Limited vs. Rajni Devi and Others reported in (2008) 5 SCC 736 which was extracted by the Hon'ble Supreme Court in Ningamma's case referred to supra. He pointed out that the deceased in the instant case who borrowed the vehicle from the owner steps into the shoes of the owner (first respondent) and hence the Appellants are entitled for personal accident coverage under the insurance policy (Ex.R1).

4.Per contra, Mr.D.Bhaskaran, learned counsel for the second respondent submitted that it is settled law that for availing compensation under the personal accident policy, the claimant must satisfy the following three conditions namely:

(a)the owner - driver is the registered owner of the vehicle insured.

(b)the owner - driver is the insured named in the policy.

(c)The owner - driver holds an effective driving license.

According to the learned counsel for the second respondent, none of the aforesaid conditions has been satisfied by the Appellants and therefore, they are not entitled for compensation under the personal accident coverage issued to the first respondent by the second respondent (Ex.R1). In support of his contention, he relied upon a judgment of a learned Single Judge of this Court in the case of M/s.National Insurance Co. Ltd., Puducherry vs. Rani and Others dated 12.03.2020 passed in CMA.No.1848 of 2017. He would submit that the issue raised by the Appellant has been elaborately considered in the said judgment and only if the claimants satisfy the aforesaid three conditions, they are entitled for compensation under the personal accident coverage. According to him, the Appellants have not satisfied the three conditions and therefore, the Tribunal has rightly rejected the claim under the personal accident coverage.

5.The Appellants are the dependants of the deceased Ragunathan, who was a rider of the motorcycle owned by the first respondent and insured with the second respondent. The contention of the Appellants in this appeal is that the deceased Ragunathan borrowed the motorcycle from the owner (first respondent). While he was riding the motorcycle owned by the first respondent, a dog crossed the road and he lost control and fell on the road causing his death. According to the Appellants, the deceased Ragunathan steps into the shoes of the owner (insured) and therefore the Appellants entitled for personal accident coverage given under the insurance policy (Ex.R1) issued by the second respondent.

6.Before the Tribunal, the owner of the motorcycle (insured) has not been examined as a witness. The pleadings of the Appellants as found in the claim petition also does not reveal that the deceased had borrowed the motorcycle from the owner (first respondent).

7.The liability under Section 163-A of the Motor Vehicles Act, is on the owner of the vehicle so a person cannot be both, the claimant as well as the recipient. In the instant case, the Appellants have filed a claim under Section 163-A of the Act. During the course of the arguments in this appeal, the learned counsel for the Appellants submitted that he is satisfied if the compensation amount of Rs.1,00,000/- for the personal accident coverage is given to the Appellants. Therefore, this Court has to only consider as to whether the Appellants are entitled for personal accident coverage as provided under the insurance policy (Ex.R1). In fact, the insurance policy (Ex.R1) clearly states that the personal accident coverage is given only for the owner - driver of the vehicle for a sum of Rs.1,00,000/-.

8.The contention of the Appellants in this appeal is that since the policy does not say that owner cum driver alone is entitled for personal accident coverage given under the insurance policy (Ex.R1), the deceased who borrowed the motorcycle from the owner (first respondent) is also entitled for personal accident coverage as he has stepped into the shoes of the owner.

9.As rightly pointed out by the learned counsel for the second respondent, the issue raised by the Appellants has already been considered by another learned Single Judge of this Court in the case of National Insurance Co. Ltd., Puducherry vs. Rani and Others by his decision dated 12.03.2020 in CMA.No.1848 of 2017. The learned Single Judge has elaborately discussed various judgments of the Hon'ble Supreme Court and has observed as follows:

> "10.In the event of interpreting any Special Provision in isolation to the other provisions of the Statute, then the very object would be defeated and therefore, the Courts cannot make an interpretation of a Special Provision, which is otherwise intended to grant certain benefits in respect of grant of compensation in the event of not establishing negligence. Thus, this Court is of the

considered opinion that, even the Personal Accident Coverage cannot be considered in certain cases, where the victim is not the registered owner of the vehicle. Three conditions are required even under Personal Accident Policy (which is not a statutory coverage in terms of Section 147 of the Act.). The said three conditions are mandatory, so as to avail compensation under the Personal Accident Policy (not a statutory coverage in terms of Section 147 of the Act). The conditions are:

(a) the owner-driver is the registered owner of the vehicle insured;

(b) the owner-driver is the insured named in the policy;

(c) the owner-driver holds an effective driving license, in accordance with the provisions of Law."

10.The decisions relied upon by the learned counsel for the Appellants before this Court has also been duly considered by the learned Single Judge in the aforesaid judgment.

11.This Court has perused and examined the said judgment and is in agreement with the view taken by the learned Single Judge of this Court in CMA.No.1848 of 2017. Since the deceased has not satisfied the three conditions for claiming personal accident coverage given under the insurance policy (Ex.R1), the Tribunal has rightly rejected the claim of the Appellants who are his dependants.

12.For the foregoing reasons, this Court is of the considered view that there is no merit in this appeal. Accordingly, the appeal shall stand dismissed. No costs.

Sd/-
Assistant Registrar(CSC VIII)

//True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accidents Claims Tribunal,
(Principal Sub Court), Mayiladuthurai.

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

+1cc to Mr.A.Sounthar , Advocate SR.No. 28287

A.SK(22.04.2021)